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PROCEEDINGS AND DEBATES

OF THE

CONSTITUTIONAL CONVENTION

OF THE

(STATE) OF NEW YORK,

HELD IN 1867 AND 1868,

IN THE

CITY OF ALBANY.

REPORTED BY EDWARD F. UNDERHILL,
OFFICIAL STENOGRAPHER.

VOLUME III.

FROM PAGE 1601 TO 2400, WITH INDEX.

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1870, Oct. 28.
By Exchange of
Duplications.

IN CONVENTION, Feb. 27, 1868.

Resolved, That there be printed, in addition to the number already printed, a sufficient number of copies of the debates, documents and journals, to furnish each of the members with three copies; and also one copy each to the Mayor and the members of the Common Council of the city of Albany; and one copy each to the State Law Libraries at Rochester and Syracuse, the law libraries of the several judicial districts, the Law Institute, the Astor Library, and the New York Historical Society in the city of New York, and the Young Men's Associations of the cities of Albany and Troy.

LUTHER CALDWELL, *Secretary*.

in their ability, in their integrity; and we now point to them as our brightest ornaments in the rise and progress of that system of internal improvements which I believe it is the cherished purpose of the people of this State to sustain. I shall not go here into the details of the proposition on this subject presented by the committee. They will more properly come up for our consideration when we reach that particular part of the report. I come now to consider the more important question, the question of finances and the question of the status of our public works during the period while this Constitution shall remain as the organic law. And, sir, when I look at that subject, I am aware it presents so many topics that I can scarcely know what to select, for the consideration of this committee. It covers our whole system of internal commerce, it covers our whole system of finance; and, covering the commerce and the finances of this State, I cannot expect to be able, in the short time allotted to me, to present all those various topics which, in a more extensive and full discussion, might be done. I shall, therefore, confine my remarks (especially under the limitation which has been adopted this morning), to some few salient points presented in this field of discussion. Sir, it is well in this matter to look a little into the past, and see what was the state of things, and what the object, when this canal policy was first adopted. Look into the early history of the State on this subject, and you will perceive that the immediate object was to open the way for the products of the western counties of this State; to relieve the settlers there engaged in bringing the western part of this State into cultivation, and in planting the germs of those settlements which have since become large towns and populous cities, filled with wealth and all the productions of art and industry. The primary object was to open a way for sending their surplus products to market; to facilitate their communication with the tide-water of the Hudson, and thence to the great center of commerce at New York. That was the first idea. But, sir, soon it began to be seen by the masses of the people, as it had been from the very first by some of the most distinguished advocates of opening an avenue for commerce from Lake Erie to the Hudson, that the trade of the State of New York was not the only prize to be gained by this vast enterprise, but that the canal when built would be the great channel of communication with a mighty region still west of this State—at that time in its very infancy—a region where the settlements had just begun to develop themselves. Countries that then were territories of our government, principally inhabited by the aborigines, but which have since grown up into large, wealthy and powerful States. Under these ideas the work was begun. The primary design of it was to accommodate the people of this State; next to secure the commerce growing up at the West—how large no one could then conjecture. It was hoped that whatever it might be it would find its way through this avenue to market. The result of this project was the Erie canal which was completed in 1825. But, sir so rapid was the development of the resources of the western territories that in the short period of ten

years—ten years only—it was found that the volume of products from the Western States had increased so rapidly upon the means of communication through the canal, that it was necessary for the people of this State to make another effort to meet the demand of western commerce. This effort they made in 1835. And it is remarkable that the reasons which then prevailed with the men of that day and induced them to adopt this project of enlarging the Erie canal, attended as it was, with a very large expenditure, and as it has turned out much larger than was then anticipated—are the identical reasons presented by the Canal Committee to this Convention to induce them to authorize the enlargement of the locks and thereby to enable the people to enjoy the full benefit of the enlargement of the prism of the canal which was resolved upon in 1835 and was finished but a few years ago. Those reasons were that the volume of trade coming to us and seeking its admission to tide water through the Erie canal was about to be—not then *was*, but was soon to be much larger than the capacity of the canal at that time. They, like wise and prudent men, like patriots, had the boldness to come forward and ask the people of this State to pledge their resources to a large amount and to give the weight of their character and their influence to that great measure. I call the attention of the committee to the action of the State, in reference to the canal enlargement of 1835. They did not wait for the full capacity of the canals to be actually reached, but anticipated the wants of the canal to accommodate the largely increased and increasing volume of western trade. In 1833 the canal commissioners, consisting of Messrs. Van Rensselaer, Bouck, Young, Karll and Hoffman, speaking of the enlargement of the canals in their report of that year, say, "The period has arrived when in this enlightened policy the locks of the Erie canal east of Syracuse should be doubled;" and again, "the capacity of the canal to meet the wants of the transportation must be attained by extending the locks and enlarging the canal to admit boats of greater tonnage. Governor Marcy, in his annual message, of 1834, speaking of the West and its trade, says:

"No human efforts—no conceivable change of circumstances can check its rapid settlement, or put far off the time when it will be the abode of a population of many millions, abounding in wealth and in numbers. If our canals are to be what a wise management cannot fail to make them, the principal channels of this trade, we must calculate its extent and make them adequate to this object. * * * We ought not, however, to flatter ourselves that we shall enjoy what we now possess and what lies in prospect before us without competition. The western trade is a noble prize for which several of the Atlantic States are contending with a laudable emulation, and they are making powerful efforts to remove the barriers interposed by nature between them and their object. * * * It has already become quite evident that the capability of the Erie canal will not much longer be adequate to the exigency of the business upon it. The improvements which will soon be required are double

locks, to facilitate the passage of boats, and an enlargement of the canal in its width and depth."

In 1835 Governor Marcy again called the attention of the Legislature to the importance of this enlargement in his annual message. In January, 1835, a special report was made to the Legislature on the subject of this enlargement, in which the canal commissioners say "that to secure the *cheapening* of transportation, by reducing the rates of toll and expenditures, the enlargement would be delayed and the business of the country, so rapidly increasing, would seek other channels and, with the tolls, be lost to the State." The Canal Committee of the Legislature to whom this subject was referred, reported favorably and in their report said: "The magnitude of the work and the present crowd of business upon the canal, make it necessary to commence it without delay. *By doubling the locks and increasing the capacity of the canal for boats of 120 tons burden the charges for transportation will be reduced more than fifty per cent, exclusive of tolls, which would give a reduction of over twenty-five per cent in the aggregate expense, and the canal will be in a condition to accommodate more than four times the business.*" The bill for the enlargement of the Erie canal was passed and approved by the Governor in 1835 and the canal board in 1836 say that "the enlargement of the canal and locks to the proposed dimensions will lessen the *expense of transportation* exclusively of tolls about fifty per cent."

Now, sir, I appeal to this committee and I ask that the same spirit may animate its members, that did those distinguished men who directed the affairs of the State in 1835; and I claim that in that spirit and confidence, after the main part of this work of enlargement has been finished, after the prism of the canal has been completed for a distance of more than three hundred miles we shall not refuse for this still increasing volume of trade, to allow similar appropriations to enlarge its accommodations and cheapen its transit. That having enlarged the prism of the canal, we by enlarging the locks to conform to its size may enjoy the full benefit of what it was originally intended the enlarged canal should confer. Sir, much has been said in this discussion with regard to the present capacity of the canal, whether really, up to the present time, the capacity of the canal has been equalled by the volume of trade which is pressing upon it. In my view of that subject, sir, I do not think it by any means an indispensable matter of fact, to be settled by this Convention. Some testimony was received by the Committee on Canals bearing upon this subject. We have reports, too, from our officers intrusted with the administration of the affairs of the canal; and there seems to be, both among these and among the witnesses who have testified in reference to this matter, some diversity of opinion with regard to the exact points reached by the volume of trade in reference to the capacity of the canal. I voted this morning most cheerfully for the proposition that an examination should be had on this subject by a very able and intelligent officer of the State; for I desire to have this question, if it can be, exactly solved. I would be happy to learn, in fact,

how this is. I find, sir, in looking at the reports on this subject which have been made, that in the year 1864 the canal board, in its report to the Legislature, stated that the Erie canal had, for the then past two years, nearly reached its maximum capacity for property seeking tide water. We should mark the language here. Not that in general its capacity had been reached, but that in the two years immediately preceding 1864, for property coming from the West seeking tide-water, the capacity of the Erie canal had been nearly reached. But this year another report has been presented by the commissioners of the canal fund, in which they say that the greatest tonnage of the Erie canal has never been reached within twenty-five per cent of its capability. We have some testimony on this subject, however, which has been reported to this Convention, which ought to be considered by this committee in deciding this question, provided it be regarded as necessary to be decided, which I do not deem it to be. However, I propose to call the attention of the committee for a moment to the testimony of Mr. Wright. He was formerly a canal commissioner, a man of great ability in the discharge of his duty as canal commissioner, and who, for a long time before he held that office, was much engaged upon the canals in business. He was asked, in regard to the capacity of the canals as they now are, and the business of the present season. It is well known to the committee that the business that comes upon the Erie canal from the Western States is principally in the fall, and it arises from this state of facts, which I know from my own observation, both on the canal and from an intimate acquaintance with some of those producing regions of the West. If there is a good market for their breadstuffs at the close of the harvest, every western farmer is anxious to gather his harvest as soon as possible and send it forward to market. And what is true of one is true of all. The whole country is moved by one impulse to press forward their breadstuffs to market and to get them to the Erie canal at Buffalo before the month of October. Hence it comes that during the busy season we find, pressing forward through the Erie canal, a large portion of the surplus product of the Mississippi valley urging its way as fast as practicable to market. This part of the season is noted generally by those who are acquainted with the canal as the season of great pressure of business upon the canal. Hence in speaking of that business in the year 1862, in which this gentleman was a commissioner, he was asked "was there at times more than you could do?" He said, "I will tell you the fact in regard to these detentions which Mr. Breed alludes to;" (another witness) "this large number of boats were there sometimes, but the men worked at it so energetically and faithfully that the boatmen were satisfied, and I reported that there was no material detention; still every month in the year, at some time, you could stand and count from ten to one hundred boats waiting to be locked through." Another gentleman was examined by the special committee sent by this Convention to Syracuse for the purpose of making an examination at the lock at that place, which re-

coives the boats from all the canals west of it, embracing the Oswego canal. This was Mr. Delemeter, who has been there for seven years acting as lock-tender. He states, in reply to the question, "What would you think was the longest time when there were boats waiting here steadily for lockage?" He replied, "about a week and that this was in November." He then goes into some statistical details to confirm his statement with regard to the detentions. Another gentleman, whose testimony was deemed by the committee of great importance, Mr. Littlejohn, has been over thirty years a practical forwarder. His attention has been called to the subject over and over again. This gentleman states that there were detentions, that the detentions were of the most serious character, and that they occurred just in the latter part of the season, when the volume of trade from the west was greatest, Sir, as I said before, I am not here to measure the exact degree of this detention. I do not stand before this committee to prove by this testimony, whether the detention was a week, or was a single day. My object in recurring to the testimony is to show that by the testimony of men well acquainted with the state and progress of business on the Erie canal, there are times when there are detentions from the very great pressure of business, and so far, we may fairly conclude that the report of our officers having charge of the canals is correct, and the state of navigation on the Erie canal is as they stated to us in 1864 and that, for several years previous to that, the volume of trade had nearly or quite reached the capacity of that canal. But sir, if we were to lay the report of 1864 out of consideration, and take the statement made in the report of the commissioners of the canal fund to the Legislature the year that the volume of trade had come up to near 25 per cent of the capacity of the canal, still the question before this committee is not varied. It is not a question of exact calculation how long we can stand still and wait for this growth of trade at the West; how long we can refuse to provide the accommodations demanded of us; whether we shall wait until the tide of increasing trade shall have risen to its height, and shall be beating at the very gates of commerce for the purpose of easy transit. No prudent man, no man who seeks the prosperity of this commerce, would ever desire that. He would look forward to the tide of trade as it was coming; he would anticipate its arrival; he would with all proper appliances entice it this way, and when it came, he would be prepared, with improved accommodations, to receive it and carry it to its ultimate destination. Such was the policy of those who resolved upon and executed the enlargement of the prism of the canal in 1835; such should be our policy now. And whether we have exactly reached that point where the volume of produce coming from the West is found to press upon the capability of the canals or not, we are assured, as I shall show this committee, that it is soon to come. It is therefore our true policy to be ready to receive it. Sir, this trade is soon to come, and to come in such volume that we shall be compelled, if we do not prepare for it now, to

permit it to be hampered, to be restricted of its rights, to be set back and driven upon other and competing routes. We should now resolve upon, and adopt some measures—I do not say what—to accommodate it when it shall reach us. Let me briefly, in confirmation of this proposition, call the attention of the committee to some interesting facts. They show that rapid increase of the trade which we desire to receive and retain. Sir, in 1826, the first year after the Erie canal went into operation, the amount of tolls was only \$844,608; in the year 1866 the amount of tolls was \$4,253,224, an increase in that period of more than five times the amount in 1826. And before 1866, in the year 1863, which has been stated by some gentlemen to have been an exceptional year, by reason of the turning of the trade over the Mississippi river this way the tolls rolled up to the magnificent sum of over five millions of dollars. But let us look back only to the short period of ten years. Ten years back, in 1856, the amount of tolls was \$2,721,740; in 1866 it was \$4,253,220, just about double. How was it with the tonnage? We find that in the year 1837 the amount of tonnage upon the Erie canal derived from the Western States was \$56,225; while that gathered from the State of New York was \$351,251; showing the large preponderance, at that time, of trade from our own State, of five times the amount of trade derived from the State of New York, brought on our canals over what was derived from the Western States. And the trade from the State of New York continued in the ascendancy for ten years, down to the year 1847, when it fell below the Western trade some \$300,000—the trade from the West on the Erie canal being 912,000 tons, and that from this State being 618,000 tons. And in 1860, the year to which we look for the last comparisons on this subject, the trade in tonnage from the Western State was 2,235,716 tons; and only 287,948 tons derived from this State, eight times more tonnage carried upon the Erie canal, derived from the Western States, than was derived from this State. I now state, as the opinion of those who are most conversant with the workings of our canal system, that we are to rely in the future mainly upon the trade that shall come to us from the rich and growing States of the West and North-west; and that if we relied only upon the tolls to be gathered from our own State, it would suffice barely to defray the expenses of the care, maintenance, and ordinary repairs of our canals, even if it would do that. Such being the source, then, from which we are in the future to derive our trade, let us inquire whether we can rely upon that source, whether we can justly expect in the future, as it has been in the past, this vast and growing acquisition of trade on the canal, to be derived from the Western and North-western States. This is our reliance; we must have faith in the future. We must believe in the growth of the trade of the West; and we must determine that our canals shall be ready in capacity and in all the conveniences of navigation to receive it. We must have some of that faith and some of that boldness, at such a juncture of our affairs, as animated those patriots who first projected this system of internal improvements, the men of the

day of Clinton and Morris; the men who even in that infant state of our country, when we were feeble, when our resources were small, when they were compelled to go even to the general government and beg of them assistance in doing the work they had resolved upon, still had faith in the future, and still believed that this work would be what it has turned out to be, the great avenue of trade not only from the western part of this State, but from the great West itself. It is refreshing at this time, when intelligent men, members of this Convention, express the opinion that we should leave these canals to take care of themselves, should only see that they are kept in ordinary repair, should only provide for their ordinary care and maintenance, and who claim that the day has gone by in which we can make any great advance, in canal navigation, to recur to the opinions of those men who designed, this great system and to find that they entertained wiser and bolder views. I wish to call the attention of this committee for a moment to an extract of a letter of Gouverneur Morris, which was written as early as the year 1808. The historians of that period inform us that he was so full of faith and confidence in this project of connecting the waters of the great lakes and the Hudson that he was almost set down as a visionary enthusiast. I will soon show you that even this wild enthusiasm, as it was then thought to be, has been more than realized. He says, writing to a friend in Europe, in 1808:

"Shall I lead your astonishment up to the verge of incredulity? I will. Know, then, that one-tenth part of the expense borne by Great Britain in the last campaign would enable ships to sail from London through the Hudson river into Lake Erie. As yet we only crawl along the outer shell of our country. The interior excels the part we inhabit in soil, in climate, in everything. The proudest empire of Europe is but a bubble compared to what America may be—*must be*."

And, sir, he relied upon this great avenue of trade, which we seek here to defend and sustain, as the main instrument in reaching that glorious position. But he did not stand alone. There were other men of our own State, also, who stood with him. In the years 1810 and 1811, while yet this idea of internal communication was in its infancy, the Legislature of this State appointed a board of commissioners to examine the route. That board consisted of Gouverneur Morris, Stephen Van Rensselaer, Dewitt Clinton, Thomas Eddy, Peter B. Porter, Robert R. Livingston, and Robert Fulton. In their report they say:

"The commissioners beg leave to observe that no supposable expense can bear an undue proportion to the value of the work. Thus, were it (by giving a loose rein to fancy) extended to fifty millions of dollars, even that enormous sum does not exceed half the value of what, in all human probability and at no distant period, will annually be carried along the canal."

Yes, even in that period of narrow finances and of limited experience in canal navigation, this galaxy of men, whose names will ever shed the greatest luster on our history, did not hesitate to proclaim "that no supposable expense can bear any undue proportion to the value of the work;" and by way of putting,

what was in their view, an extreme case, they said, even if it should rise to fifty millions of dollars, that sum would not be more than one-half the value of the product which in a single year would float upon the grand canal they had then projected. And to-day, sir, after a little more than half a century from that period, what is the result? The value of the produce that was carried last year upon the canals of this State exceeded \$270,000,000; more than half of which should be estimated as the value of the tonnage on the Erie canal alone. With the faith that these men had, let us consider the question before us. They looked to the same source for this trade that we are now to look. They were not disappointed; but their expectations were more than realized. I say to this committee to-day, relying as we do upon the same source of trade in the future, looking to the great West with its inexhaustible resources of wealth ready to spring into life and desiring to pour its riches into our lap, we have but to do as they did, under all the discouragements which surround us. Our indebtedness is large. But it is an indebtedness which the State can bear to-day better than it could bear the first large debt which was thrown upon it through the construction of the Erie canal. We have to-day more financial strength, greater resources, and the same sources of increased future revenue before us, unexhausted and still opening up every year by the steady progress of emigration, cultivation, and enterprise, in the great and growing West. Let us not then, at this time of largely increased financial strength, fail in the acquisition of the prize, although it may cost us a few millions of dollars, a small expense compared with the amount the fathers of our canal system were willing at that early period to expend for its acquisition. I am disposed to rely upon the view presented to the people of this State so ably by the Committee on Canals of the last Legislature. I beg leave to read to this committee a part of what they have said upon this subject:

"If we turn our attention to the States of the West and North-west, whose products find their best and most natural outlet to the ocean through the lakes and the Erie canal, we will see no indication that they are to remain stationary in the general progress. In 1860, the population of eight States, including Ohio, Indiana, Illinois, Missouri, Iowa, Minnesota, Wisconsin and Michigan, was nearly 9,000,000, being an increase for the previous decade of 85.74 per cent. At the same rate of increase, their population in 1870 will be 15,000,000, and in 1880, 25,000,000. They have an area of 285,000,000 acres, of which not more than one-sixth has yet been brought under cultivation. Their aggregate product in grain, on this limited breadth of cultivated territory, was, in 1850, 310,000,000 of bushels, and in 1860, 557,000,000. In 1850, they had 1,200 miles of railroad, and in 1864, 12,000 miles in operation, and no less than 18,000 miles projected. Astonishing as these figures may appear, they are drawn from official sources entitled to the highest credit, and there is no reason to doubt either the facts stated or the conclusions as to the future progress of this fertile region, to which they unavoidably

lead. It is not extravagant to assume that within the next ten years, the surplus products of these great grain producing States will tax to its utmost the present capacity of every route to the ocean, and that, unless the obstacles to its progress are removed, it will find avenues to the seaboard by other routes. Extending the range of our observation beyond the States just mentioned, we shall find a territory hitherto little known, stretching west to the base of the Rocky mountains, and north to the limits of the United States. That portion of it included in the territory of Dakota alone, contains 240,000 square miles, an area sufficient to form three States as large as Minnesota. A system of railroads, starting from the head of Lake Superior, and penetrating it to the distance of four hundred miles, would strike the upper waters of the Missouri, and with that river, form a magnificent line of inland communication having its eastern terminus at no greater distance from Buffalo than the cities on the southern shore of Lake Michigan. In salubrity of climate, fertility of soil and accessibility to the great chain of inland lakes, it is most favorably situated, and its rapid settlement is not more certain than that its products will find their way to the ocean, by one or more of the avenues that radiate from the foot of Lake Erie."

It being therefore evident that we must look to the Western and Northwestern States for the resources of supply to the business of our canals, and particularly of the Erie canal, let me ask this committee to inquire how rapidly it is necessary for us to move in order to be ready to accommodate this vast accumulation of trade upon our canals. I could state in general terms the rapidity with which the West is being settled and developing its resources; but I should fail by such generality to make the impression I desire upon your mind. I would rather refer to a single instance of that advance, which I think is illustrative as well as any other of the rapidity of the growth, enterprise and energy of that people whose trade we invite to our borders. I refer to the city of Chicago; and I ask the attention of the committee for a moment, to see the rapidity with which the West is piling up with wealth, and is accumulating its vast products to be transmitted to us, if we will but be prepared to receive them. I have before me the last published report of the board of trade of Chicago; and from that, an authentic document, I have made a few extracts to which I beg leave to call your attention. In 1835, just the period when we were beginning to prepare for this great increase of western product just when the people of this State found that there was living at the distant West a great and growing people who would demand of us an enlarged canal to transmit their products—at that time the population of Chicago was less than 4,000. In 1866, it was over 200,000. In thirty-one years it had rolled up a population equal to the large capitals of the East, and to some of the large cities of Europe. In 1835, the tonnage of Chicago was nameless; so inconsiderable as not to arrest the attention of any one. In 1866, its tonnage exceeded two and a quarter millions of tons; two and a quarter millions entering that port, and two and a quarter millions leaving it.

In 1835, it had no shipping, or not an amount deserving to be recorded. In 1866, its shipping exceeded 11,000 vessels of all kinds, entering and leaving; and there were more than 93,000 seamen to man those vessels. In 1835, Chicago had not a single railway. In 1866, it had nine large trunk railways, five of which were mainly occupied in bringing the products of the prairie region into that city for transportation to the East; and last year they brought, of the article of wheat alone, into the city of Chicago, now the granary of the world, for the purpose of distribution, 11,952,000 bushels. In 1837, the shipments of grain amounted to 73 bushels. In 1866, the shipments of grain amounted to over 66,000,000 bushels. I might refer to other points, where the increase of the business has been astonishing; but none I think which more truly picture to us the growth of the vast region than does the growth of the city of Chicago. So that it appears that while the people of this State have been devoting their energies to preparing the way for this great trade, by enlarging the Erie and Oswego canals from 1825 to the present time, the trade itself has been so marvelously increased that we are now after a lapse of only thirty-one years, called upon to make still further arrangements to enlarge our channels of trade for its reception. The question arises, what shall we do in the contingency which has arisen in reference to the most important interest of the State? It devolves upon this Convention to decide what shall be done. The Finance Committee have presented one plan, and the Canal Committee, present another. By the plan of the Finance Committee, the improvement of these canals by way of enlargement is substantially postponed until the entire remaining canal debt shall have been paid. It seems apparent to any one who will examine the provisions reported by the Committee on Finance, that it will require some fifteen or twenty years, before that debt will be paid. Are we to lie still for fifteen or twenty years, and do nothing to meet the demands of this trade? Are we, because we owe some fifty or sixty millions of dollars, to say, this is of so great and so crushing weight upon the people of this State that we must suspend all improvements, and do nothing to improve or enlarge the Erie canal or our other public works until the debt is paid? Must we shut the gates of commerce, and, sitting quietly down, fold our arms and say we will spend no money to increase our revenues in this direction, but will wait until this debt shall be paid by the revenues at present derived from the canals? Or shall we do as those who have gone before us have done, and follow the bright example which they have left? Seeing the prize before them, they resolved that they would rely upon the financial strength of the State to meet the emergency; shall we not adopt a similar policy now that we are to expend a few million dollars more to complete the enlargement of the canal? Shall we wait until this immense trade is pressing upon us, ready to pour its golden harvest into our treasury, before we attempt to prepare the necessary accommodation for it? Shall we leave it to find its way to other markets that will prize it more than we do?

That is the question which is presented to this Convention. What is it that the Committee on Canals propose to do? How do we meet this question? We propose to do it, not by asking the people of this State to vote a large additional debt. It has been suggested for a year or two past, by some very discriminating and very able men, to whom I would be willing under other circumstances to refer, that we should create an additional debt for this purpose. We feel confident that the people would not authorize that. I believe, however, that if we could not secure this great prize without encountering additional debt now, to the amount of ten or fifteen million dollars, it would be well worth our effort to do it. But this is not necessary. We find this condition of things. We find now that the canals, on which people of this State have mainly to rely to pay their aggregate debt, estimated by the chairman of the Committee on Finance, at nearly \$40,000,000, exclusive of the county debt, are now pouring into the treasury annually, and have been for the last seven years, their millions of dollars of net revenue. If you will take the trouble to look at the financial statement appended to the report of the Committee on Canals, you will find that we can take that revenue now—\$3,000,000 a year—and apply it from year to year to pay the interest of our debt, and a part of it to meet about two millions of principal falling due, and still have enough money left to complete all which is proposed by the committee, and all that is necessary to be done to secure this increasing trade. I will not detain the committee by closely analyzing the financial statement annexed to the report of the Committee on Canals, but I commend it to their consideration; they will see that this is a practical way of meeting the demand on the resources of the State. All that we have to do, after applying these surplus revenues, is to borrow some five years hence about \$3,500,000, on a deficiency loan, for the purpose of aiding in paying the canal debts which fall due in the years 1873, 1874, and 1875; and about \$1,600,000 to pay a portion of the general fund debt, falling due before that time, making between five and six millions of dollars in all. The payment of this deficiency loan is also provided for in January 1879, out of revenues of the canals thereafter accruing.

The CHAIRMAN announced that the hour had expired to which each speaker was limited by the rule adopted this morning.

Mr. ALVORD—I will ask the unanimous consent of the committee that the gentleman from Rensselaer be permitted to go on with his remarks, and that he be allowed another hour, for the reason that he is a member of the Committee on Canals, and one of the sub-committee to which was referred particularly this branch of the policy of the State with reference to its canals. It is eminently proper under the circumstances that he should be permitted, at least for another hour, to go on and give us his views on that subject. I trust, therefore, that there will be no objection.

Mr. CHURCH—I certainly shall not interpose any objection myself; but if this consent is to be given to the gentleman from Rensselaer, I ask at the same time that unanimous consent may be

given to Mr. Tilden, of the Finance Committee, to occupy also another hour.

Mr. ALVORD—I trust that will be given.

Mr. BICKFORD—I shall object, unless it is understood to be confined to these two gentlemen, and that it is not to be extended.

Mr. FOLGER—I feel bound to object to both propositions.

Mr. ALVORD—For the purpose of testing this question in Convention, I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put, and upon division, the result was a vote of 33 to 25.

SEVERAL DELEGATES—There is no quorum.

The CHAIRMAN—There is no quorum present.

The committee rose, and the PRESIDENT *pro tem.* resumed the chair in Convention.

Mr. SMITH, from the Committee of the Whole, reported that the committee had had under consideration the reports of the Committee on Finance and on Canals, and upon a division, no quorum being present, had instructed their Chairman to report that fact to the Convention.

The SECRETARY proceeded to call the roll, and the following gentlemen answered to their names:

Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Archer, Armstrong, Axtell, Baker, Barnard, Barto, Beals, Beckwith, Bell, Bergen, Bickford, Bowen, E. Brooks, E. A. Brown, Carpenter, Case, Cassidy, Church, Cochran, Comstock, Duganne, C. C. Dwight, Eudress, Folger, Fowler, Francis, Fuller, Garvin, Grant, Gross, Hadley, Hammond, Hand, Hardenburgh, Hatch, Hitchcock, Hitchman, Houston, Ketcham, Krum, Lapham, Larremore, A. Lawrence, M. H. Lawrence, Livingston, Loew, Lowrey, Mattice, Merriut, Merwin, Murphy, C. E. Parker, President, Prosser, Reynolds, Rogers, Roy, Rumsey, Seaver, Seymour, Sheldon, Sherman, Smith, Spencer, Stratton, Strong, S. Townsend, Van Cott, Verplanck, Wakeman, Wales, Weed, Williams—77.

Mr. WEED moved that the Convention do now take a recess until seven o'clock.

On that question a division was called for.

Mr. ALVORD—I do not desire a call of the house at this time, but I will ask the President, in the name of the Convention, to ask an officer of the house to go to the boarding-houses and see if he cannot get a quorum.

The PRESIDENT *pro tem.*—The Chair has already given that direction.

Mr. BELL—I move that the absentees be called.

The PRESIDENT *pro tem.*—The question now pending is upon the motion to take a recess until seven o'clock.

The question was put on the motion of Mr. Weed, and it was declared lost.

Mr. BARTO moved that the Convention do now adjourn.

The PRESIDENT *pro tem.*—That will carry the Convention over until to-morrow morning.

Mr. E. BROOKS—I call for the ayes and noes on the adjournment. That will bring a quorum.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put upon the motion of Mr. Barto to adjourn, and it was declared lost by the following vote:

Ayes—None.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Archer, Armstrong, Axtell, Baker, Barnard, Beala, Beckwith, Bell, Bergen, Bickford, Bowen, E. Brooks, E. A. Brown, Carpenter, Case, Church, Cochran, Comstock, Duganue, C. C. Dwight, T. W. Dwight, Endress, Field, Folger, Francis, Fuller, Garvin, Grant, Gross, Hadley, Hammond, Hand, Hardenburgh, Hitchcock, Hitchman, Houston, Ketcham, Krum, Lapham, Larremore, M. H. Lawrence, Livingston, Loew, Lowrey, Mattice, Merritt, Merwin, Murphy, C. E. Parker, Potter, Prosser, Reynolda, Rogers, Roy, Rumsey, Seaver, Seymour, Sheldon, Sherman, Smith, Spencer, Stratton, Strong, S. Townsend, Van Cott, Verplanck, Wakeman, Wales, Weed, Williams—74.

Mr. ALVORD moved that the Convention take a recess until seven o'clock this evening.

The question was put, and, on a division, the motion prevailed by a vote of 40 to 27.

The Convention accordingly took a recess until seven o'clock.

EVENING SESSION.

The Convention re-assembled at seven o'clock and resumed proceedings.

Mr. ENDRESS—I am obliged to ask leave of absence for this week to attend the sick-bed of a friend.

There being no objection, leave was granted.

Mr. SMITH—I ask indefinite leave of absence for Mr. M. I. Townsend. He is called away by the sickness of one of his relatives, and will return as soon as possible.

There being no objection, leave was granted.

Mr. SEAVER—I ask leave of absence for the remainder of this week for Mr. Eddy, on account of important business.

There being no objection, leave was granted.

Mr. AXTELL—I ask indefinite leave of absence for Mr. Hale, of Essex, on account of the illness of his wife.

There being no objection, leave was granted.

Mr. BICKFORD—I cannot sit here without objecting to indefinite leaves of absence.

The PRESIDENT—The gentleman's objection comes too late in this case. The Secretary will proceed to call the roll.

The SECRETARY proceeded to call the roll of the Convention, and the following members responded to their names.

Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Baker, Ballard, Barnard, Barto, Beala, Beckwith, Bell, Bergen, Bickford, Bowen, E. Brooks, E. P. Brooks, Burrill, Carpenter, Case, Champlain, Clinton, Comstock, Cooke, Corbett, C. C. Dwight, T. W. Dwight, Ely, Endress, Folger, Fowler, Fuller, Garvin, Grant, Graves, Greeley, Gross, Hadley, Hammond, Hardenburgh, Harris, Hatch, Hitchcock, Hitchman, Houston, Krum, Lapham, Larremore, A. Lawrence, M. H. Lawrence, Lee, Loew, Lowrey, Ludington, Merritt, Merwin, Miller, Monell, Murphy, Opdyke, A. J. Parker, Potter, President, Prosser, Reynolda, Rumsey,

Schoonmaker, Schumaker, Seaver, Seymour, Sheldon, Sherman, Smith, Spencer, Tappen, Tilden, S. Townsend, Van Campen, Van Cott, Verplanck, Wakeman, Wales, Weed, Williams—87.

Mr. ALVORD—I desire to make a motion before the Convention goes into Committee of the Whole, that the gentleman from Rensselaer, Mr. Seymour, and the gentleman from New York, Mr. Tilden, be excepted from the rule confining members to one hour's debate, and that in this case they have half an hour each extra.

Mr. FOLGER—I rise to a point of order. The motion cannot be entertained without reconsidering the resolution by which debate was confined to one hour. If the two gentlemen named are excepted, I do not see any reason why other gentlemen should not be excepted; and it is for that reason alone that I made objection when unanimous consent was asked of the Convention to the continuance of the remarks of the gentleman from Rensselaer [Mr. Seymour]. It is now moved that the two gentlemen named by the gentleman from Onondaga [Mr. Alvord], be excepted from the operation of the rule. It seems to me it is a violation of the rule, and can only be adopted by a reconsideration of the rule itself.

Mr. ALVORD—I rise to a point of order, and there might have been another point of order raised—that this action being a rule, as claimed by the gentleman [Mr. Folger], it would require two-thirds of those present and voting to have passed it. There was no such vote taken on it. Why I desire those gentlemen to be excepted from that rule is, that one of them [Mr. Tilden], belongs to the Committee on the Finances of the State, and the other [Mr. Seymour], to the Committee on Canals; and both of them having had largely to do with the getting up of the reports of those committees, I think it is nothing but justice to let them have this extra time. I do not desire it for myself in the future in the part I may take in this discussion. I do not propose to take it at any time, or even half an hour in any discussion; but by reason of the circumstance I have stated, I thought it right and proper these gentlemen should be accorded extra time.

The PRESIDENT—The Chair rules that it is within the province of the Convention to make such other limitations or exceptions to the rule as they think proper.

The PRESIDENT announced the question on the motion of Mr. Alvord.

Mr. WAKEMAN—I ask that the question be divided, so that we can vote on each part separately.

The question was put on the motion of Mr. Alvord, on granting additional time to Mr. Seymour, and it was declared carried, on a division, by a vote of 52 to 22.

The question then recurred and was put on granting the same leave to Mr. Tilden, and it was declared carried, on a division, by a vote of 54 to 19.

A DELEGATE—There is no quorum on the other.

Mr. WALES—There was no quorum on the other question.

The PRESIDENT—The Chair thinks there is quorum present. Gentlemen will vote on the question one way or the other.

The PRESIDENT again put the question, on the motion of Mr. Alvord granting leave to Mr. Tilden, and it was declared carried, on a division, by a vote of 63 to 24.

The Convention again resolved itself into Committee of the Whole on the report of the Committee on the Finances of the State, and on Canals, Mr. SMITH, of Fulton, in the chair.

The CHAIRMAN stated the pending question to be on the amendment of Mr. Verplanck.

Mr. SEYMOUR—I wish to present my acknowledgments to the committee for the indulgence they have granted me; and had I supposed in the morning my time was so nearly exhausted I would then have condensed my remarks on this subject. I trust I may be able to close within the time allowed me. I had considered, Mr. Chairman, the necessity of doing the work proposed by the Committee on Canals, and my argument in favor of it was founded upon the well ascertained fact that the volume of business coming eastward through the Erie canal is shown by well-established data, to increase so rapidly as to double once in each period of ten years; and I have further shown that we may safely calculate upon that rate of increase for some time to come. Assuming then that I have established this fact, it will be necessary to make some improvement on the canals by way of enlarging their capacity very speedily. I proceed now to consider what the Committee on Canals propose to do. The committee in making the proposition which they have looked at the region from which we are receiving our supplies of produce and our tonnage upon the Erie canal, and found that there were five large grain-growing States, namely, Indiana, Illinois, Iowa, Minnesota and Wisconsin, now affording more than one-half of the produce that comes from the Western and North-western States. Of these States not more than one-sixth part is occupied by settlers. But they are advancing in improvement and production at the most rapid rate. They are traversed by numerous railroads from east to west, that carry their surplus products either to the Mississippi on the west, or to the lakes on the east. The committee found that upon these lakes and upon the Mississippi, freight was only regulated by competition, and that upon the Hudson river also freight was regulated by competition, but they saw that upon the Erie canal, for the distance of over three hundred miles they could institute an improvement, which, by increasing the capacity of the boats by which the surplus product of these States was carried, they could very largely increase the amount of products that would inevitably seek the canal route. This will result from diminishing the expense of transportation. Thus will we accomplish what the continual competition of individual carriers upon the rivers, lakes and canals themselves are long in effecting. Two things then were to be considered; first, cheapening transportation; secondly, if possible, a more rapid transit. It is thought that both can be largely accomplished by the improvements which the committee suggest. In reducing, however, the expenses of transportation they prefer that the reduction should be rather by diminishing the charges for freight than by reduction

of the toll. Hence they have presented the plan of retaining the tolls at their present rate by a provision in the Constitution. This will prevent their being reduced, as sometimes in years past has been done, much to the detriment of the State, and without attracting within our limits any very large accession of trade. They, therefore propose that the rate of tolls, as at present established and of which there is no complaint in any quarter, shall be retained in the Constitution for the future. They propose to make this reduction in the expense of transportation, thus enabling the forwarders to reduce the charge upon freight, confident that they will be compelled so to do by the competition which will exist between themselves. Now, sir, we are strengthened in our opinion of the policy of this course by referring to the commissioners of the canal fund. We have their report on this subject and their estimate from which they conclude that the reduction will be thus effected. They say, in this report made to the Legislature at its last session, "the time is not far distant when the capacity of our canals will fall far short of what will be required for the astounding production of future years; and a reduction in the time and cost of movement is a present necessity, which cannot, with safety to the interests of the State, be longer overlooked. An enlargement of the locks of the Erie and Oswego canals, so as to admit of the passage of boats of 600 tons burden, moved by steam, would reduce the cost of transporting a ton of wheat from Buffalo to Albany one-half the present rates, and the time of movement in the like proportion. In the completion of this great improvement, there would be gained, as a collateral advantage, an increased capacity equal to the requirements of our interior trade for many years." And, although we should not succeed, which we hope to do, when these large sized boats shall be introduced, in propelling them by steam, yet we believe the same reduction substantially will be effected, even if the boats shall continue to be propelled by horse-power. It amounts to this, that double the amount can be forwarded in nearly the same time as now carried by the small boats. The large sized boats at present carry 250 or 300 tons. We propose to adapt the canal to boats of 500 or 600 tons, manned by substantially the same crew, and propelled by a very small addition of power. To do this we rely on the length of the boat rather than upon its breadth. We rely upon that principle which has been carried into successful operation within the past few years, both in this country and in Europe, that you can double the capacity of a boat, whether propelled by steam-power or horse-power, by doubling its length. That has been demonstrated, and the reason for it given by scientific men. A very learned gentleman, Dr. Lardner, in his treatise upon the economy of railways, lays down this proposition, and gives instances of its application successfully both in England and in this country. And it is within our own observation that during the past few years, the enlargement of steamboats on the Hudson river has been accomplished by enlarging their length, while their breadth has remained substantially the same. By this operation

the boats will again double their present capacity as these scientific writers affirm, while it has been found by practical experience that no very great increase of power will be required. It will be only so much as arises from the friction upon the sides of the additional length. Now, sir, I think we are authorized to affirm that the result of the introduction of these large boats will be to diminish the expenses of transportation one-half, while it increases at an equal rate the quantity of produce which will come forward. Now retaining as is proposed, the present charges for tolls, we feel quite confident that the revenues of the State will be largely increased by the project of the Committee on Canals. If we have now between four and five millions of gross revenue annually, we look for an increase to five and one-half or six millions from the general introduction of these enlarged boats. If we have now a net revenue of three millions of dollars, it is believed we can safely predict under this new system an increase of revenue to four and a half or five millions of dollars. But, sir, I must proceed. In the discussion of the morning, I said that we stood with regard to this question now precisely where the Legislature of this State stood thirty-one years ago when the enlargement of the canals was projected and carried through. I have already referred to the past history of the State, to show that the expediency of the enlargement of 1835 was placed upon the same grounds that we place it here, namely, that an increase in the size of the boats would cheapen freight, would enable the State to reduce the tolls and thus reduce the expense of transportation in the aggregate more than fifty per cent, and would increase the volume of trade about as much more. I call attention of the committee to the statistics, showing conclusively that their anticipations were more than realized :

In 1836 the tolls on 100 tons each way through the Erie canal were,	\$987
" Freight on do. each way, . . .	1,829
Amount of tolls and freight, ...	\$2,816
In 1866 the tolls on 100 tons each way through the Erie canal were	\$316
" Freight do., ...	426
	\$742
In 1836 the volume of trade on Erie canal was, ...	419,125 tons.
In 1866 the volume of trade on Erie canal was, ...	2,523,664 "
In 1836 the average cargoes of boats were, ...	33 "
In 1866 the average cargoes of boats were, ...	170 "
From 1843 the average tonnage of boats increased from 64 tons to 154 tons in 1866.	
In 1836 lockages at Alexander's lock on Erie canal were, ...	25,510
In 1866 lockages at Alexander's lock on Erie canal were, ...	29,882

Thus it appears that such has been the increase in the size of the boats used on the Erie canal that whereas in 1836 it required 25,516 lockages at Alexander's lock, two miles west of Schenectady, to take through 419,125 tons, the amount of tons

carried that year on the Erie canal, it took, in 1866, 29,882 lockages to take through 2,523,664 tons carried on the Erie canal that year—only 4,366 lockages more to lock through in 1866 five times the quantity of freight. I affirm we now have before us precisely the same condition of things to be met, if we are wise, precisely in the same way, by now enlarging the capacity of the boats, diminishing the expense of transportation, and increasing the volume of trade while we hold on to the tolls as they now are. Thus we shall largely increase the revenue of the canals. I now refer to the position advanced in a report of one of the members of the Finance Committee [Mr. Clarke], that it was the speed of transit now that ruled and carried off the palm in the competition for the trade of the West. He claimed that speed of transit had given the railroads the superiority which they now enjoy. Sir, it is within the recollection of some gentlemen here, I think, that this important question has been examined and reported upon by an able commission representing some of the ablest engineers we have ever had in this State. I refer to Jervis, Hutchinson and Mills. I have before me their elaborate report on that subject. They lay down the proposition that there are certain articles which, to be advantageously transported, must be transported by railroads, that there are other articles, those of the heavier kind, which, to be advantageously transported, must be carried by canal. It has turned out in practice as they reported some thirty years ago, that each mode of transportation has its appropriate field. Railroads have theirs, and we rejoice in their prosperity. Canals have theirs, and the canals would show a much larger increase of business if their operations had been watched with the same diligence and the same care with which private capital has administered the railroads. No improvement of science has appeared but the owners of railroads have pressed it into their service; but the canals, sir, have remained with little or no improvement. They have been governed and controlled by officers, who, in some instances, preferred their own advancement to the public weal, plundering and pilfering from the treasury of the State. I have statistics upon this subject, but I have not time to present them. It has been said that the plan presented by the Canal Committee is not feasible—that these boats will be found too large for convenient use on the canal. Sir, if we look at the breadth of the canal—seventy feet upon the surface and fifty-two and one-half feet at the bottom, with seven feet depth of water—we shall see that two boats can readily pass each other, and have twenty-four feet on the surface, and six feet on the bottom to spare. There is no difficulty, therefore, in these boats, loaded with large cargoes, to pass each other, with due care. It has been further objected that there are parts of the canal where this cannot, by reason of curves, be done. And the gentleman from Rockland [Mr. Conger], has depicted to us, upon a drawing exhibited in this hall, the sad catastrophe that might happen if two of those boats should happen to meet while going around some sharp curve of the canal, one boat, I suppose,

freighted with the Canal Committee, and the other with the Finance Committee, [laughter], having my friend from Orleans [Mr. Church] at the prow. Sir, this picture may serve to frighten some, but if you look to what science has done in the construction of public works, and is still able to do, I think the fears of the gentlemen may be easily quieted. For one, I have no apprehension of any such disastrous result. Those are contingencies presented by the witnesses on the stand and we have provided in our amendments and in the appropriations asked for that these sharp curves shall be properly reduced. It has been further objected that these enlarged boats would increase the expense of navigation so much that they would not be used. I have already spoken on that subject. But I wish to say to the committee in reference to the idea of introducing steam-power that we believe it will be successfully introduced and I now say that in looking over this whole subject, I believe that, even if the improvement now suggested shall be accomplished, the time will come when the State will be required to go still further. Never shall we make the Erie canal what it ought to be, never shall we equal the extent and greatness of its original conception, unless we keep up with the improvements of the age. We must yet attain a position where steam can be employed, so that a cargo can be carried at the rate of from two to three miles an hour. Three miles an hour is the progress attained upon the Delaware and Raritan canal, and the State of New York should have upon the great highway between the East and the West, a canal capable of doing all that it is required. Such means of transit they never can have unless it shall be made large enough to admit of the action of steam-power. We hope now to make a successful movement in that direction. Sir, we live in an age of progress. We cannot stand still even if we would. We have constructed this work at the expense of millions, and if we are to make it valuable to us, if we are to make it adequate to the object for which it was designed, we must carry it on with the advance of the age, in production, and in wealth and enterprise. Sir, let us look for a moment at the other objections which have been brought forward. It is said by the Finance Committee that this improvement is not needed now. "We can wait a while. We should wait a while." In the mean time, it is said, our policy is to go on paying our debts, and relieve the people from the great indebtedness under which they are laboring; that the true way to diminish the expense of transportation is to pay the debts that we owe and then reduce the tolls. Sir, I do not consider this the proper debt-paying policy. I am a friend of a debt-paying policy. I am attracted to that policy. I was educated, so far as I have been in public life, to love it, and I adhere to it now. I stood shoulder to shoulder with the gentleman from Orleans [Mr. Church] and other gentlemen I now find on that side of the question, years ago, when they, in the same party with myself, advocated the adoption of a debt-paying policy and triumphed in 1842. I stand by such a policy now; and I am for enlarging these canals, so as to attract a larger volume

of business, and with larger acquisitions every year in business to increase our revenue. I desire to increase the revenue of the State, by which our debts are to be paid. I am ready to go before the people, the manufacturers, the merchants and the farmers of this State, and stand upon this question as a debt-paying policy. I would say to them "you have in your possession this mighty engine which is now giving you a net revenue of three millions every year. A large indebtedness presses upon you. Devote a few millions of dollars to increase the efficiency and the power of that engine. Increase its power now; do not wait until to-morrow or next year, and in the mean time sit coolly counting the dollars that its present imperfect power yields you." I would increase its power by an expenditure, trifling compared with the debt which is to be paid, and, instead of being content with its paying three millions into the treasury, cause it to pay five millions into the treasury, and that within three years from the time we are debating this question. This is the ground upon which I would justify the proposed expenditure. I would put it upon the same ground that I would advise the farmer who has mortgaged his farm, and who should state to me that the question was whether he should appropriate his annual income for a few years to pay off the debt or to improve a water-power on his farm and increase the revenue of his property. I would say "increase your revenue and pay your debts." I would put it upon the same ground that I would address to the manufacturer who had mortgaged his large manufacturing establishment; and if new and more efficient machinery could be brought into use, yielding him a larger revenue, I should say to him "apply your present income to the purchase of the new and better machinery, increase your revenue and pay your debts." I would say to the merchant laboring under a heavy debt and importing in small ships, "you are largely in debt; I advise you to use your surplus profits or, if you have none to spare, to contract a debt even now and increase the size of your ships, double your cargoes, and thus increase your net revenue and apply that increased revenue to paying your debt." Sir, these are common place and common sense illustrations and appeal to the understanding of every man. It is in testimony before us from engineers of high respectability, who have years since earned the respect and confidence of the people, that this work can be done at least in two years, and can be done within the limits of what we propose to expend upon it. But I must hasten to another consideration. It is said in the report of the Committee on Finance that these improvements can be done under those sections of the Constitution which they propose, or if it cannot be accomplished in that way, it can be by amendments to the Constitution, and by remodeling the organic law. Sir, I ask gentlemen to look at that proposition. They will see that all the revenues of the State are tied up and exclusively appropriated to the payment of twenty-one millions of bonded debt—the amount of the canal and the general fund debt. They will also observe that the Committee on Finance do not expect to pay that debt until the

expiration of ten years. They will see that the Committee on Finance after that debt is paid, instead of permitting any portion of our increasing revenue to be applied to the improvement of the canals, from which alone this revenue is derived, insist on paying eighteen millions more, a debt not of bond holders, not of persons holding securities, and demanding pay of the people of this State, but a sum of money advanced by this State itself, to construct and enlarge its own canals. Sir, the honor of our State demands that we should sustain, improve and advance these great works, and make them such as their immortal projectors intended they should be, and such as the great West desires, and has a right to insist they shall be—the grand avenues of trade for this continent. The interest of the State demands that, by enlarging these locks, and thereby increasing the capacity of the canals, we should increase our income from this only source of our revenue. If they now yield annually \$3,000,000, good policy, just economy, and good statesmanship demand that we should, by increasing their capacity, enable them to double their income. A due regard for the *tax payers* of this State demands this improvement, as a financial measure of aid to them. Loaded with debt, and crushed by the weight of taxation, as they are, we should not permit the only source of relief to them to go to decay, and sink into disuse. Our *plighted faith* to the great West demands these improvements. Relying upon pledges given when our fathers projected, and first opened this artery for the trade of the West, the pioneers of eight sovereign States larger than our own, planted themselves in the then wilds of our western territory, and have, by their industry and economy made the great valley of the Mississippi to smile and blossom as the rose. But all this time their faces have turned to their homes and their kindred in the East with the love, the attachment and confidence of children. They have sought our marts of trade and business and social connections, and are now asking their continuance. Let us not say to them “your hopes and expectations are illusory; the avenue of trade and intercourse which seemed to unite us in business and social relations must be forever closed.” Sir, I will not pursue this train of thought further. Should this Convention, unfortunately, adopt the proposition of the Finance Committee and make no provision for advancing and improving our canals as the increasing trade of our country demands, I have no fear that the people will ever adopt this Constitution. No, sir, they know their interests, and I am persuaded they will protect them. They never will sanction by their vote a system which destroys the canals, despoils the people of their magnificent revenues, and delivers the tax payers and the whole mass of our citizens, from Lake Erie to the Hudson river over to the power of railroad corporations to be erected upon the ruins of the grandest and most remunerative canal system the world ever saw. No, the good sense and patriotism of the citizens of this State inspires them to make still greater efforts to sustain their commercial supremacy. They yet see in the coming future the march of

improvement; they yet believe in the truth of that prophetic utterance:

“Westward the star of empire takes its way.
The first four acts already past,
The fifth shall close the drama with the day,
Time's noblest offspring is its last.”

They hope for the early completion of that great national railroad enterprise which shall span this continent from the Atlantic to the Pacific. They look forward to the day not far distant when the trade of Asia mingling with that of America, shall find its center at the city of New York—also the money power of the world shall no longer be seated in that little “fast anchored isle,” but shall be located in the great commercial emporium of our own imperial State.

Mr. COMSTOCK—Mr. Chairman: I am conscious of being less qualified than many others, probably than most others, to discuss the important questions now before the Convention. The subjects are of a class to which I have not been accustomed to give my time or my thoughts. Since, however, the two reports of the Canal and Finance Committees were laid before the Convention, I have examined with some care the financial and other facts which legitimately belong to this discussion, and I will now present briefly some of the views which I entertain. The gentleman from Erie [Mr. Verplanck] a day or two since proposed an amendment to the article reported by the Finance Committee, and my observations will be in the main directed to the principle involved in that amendment. His proposition is to strike out in the first section from the category of debts and liabilities to be provided for, the sum of eighteen millions of dollars, which is there stated to be the amount of taxes and interest thereon contributed to the canals or to canal purposes since the year 1846. By a singular misapplication of terms, and what seems to me an equally singular inversion of logical thought, this sum contributed by the State for the benefit of the property of the State is called by the Finance Committee a debt or liability for which the revenues of the canals are pledged. The people of the State cannot owe the people of the State, nor can they hold a pledge or mortgage upon their own canals, any more than an individual can be in debt to himself and can hold a mortgage on his own estate. If this amendment of the gentleman from Erie prevails, as I hope it will, then it will necessarily follow that all parts and sections of the report of the Finance Committee which require this eighteen millions to be paid into the treasury from the canal revenues, and then to be paid out again upon the war or bounty debt of the State, will also be struck out as soon as they are reached, and will also fall to the ground. These connected provisions of the report are in the highest degree material and fundamental, and I am invincibly opposed to them. I therefore give my fullest support to the amendment in question. Let us first look at the financial facts and situation in 1846, and the arrangements in reference thereto of the existing Constitution. The Constitution of 1846 pledged the canal revenues for something over \$23,000,000 of public debt. The canal debt was then, in

round numbers, \$17,500,000, of which about \$10,000,000 had been incurred in the unfinished enlargement of the Erie, and \$7,500,000 in the construction of the lateral canals, which were also unfinished. The general fund debt, so called, was at that time about \$5,800,000, making in all a little over \$23,000,000 of public debt. This was the whole debt of the State, and the whole of it was charged upon the revenues of the canals. Whether this was just or unjust, I do not now consider. It is the fact alone which is material to my present purpose. This charge was made in a certain order of preference between the public creditors. First the sum of \$1,700,000 was required by the Constitution to be set apart annually as a sinking fund to pay the interest and redeem the principal of the canal debt. After that requirement should be complied with, next the sum of \$350,000 was to be set apart annually as a like sinking fund for the general fund debt, so called, and this was to be increased to \$1,500,000 annually, as soon as the canal debt should be paid or provided for in the manner indicated. And next in order an annual appropriation of \$200,000 was to be made toward meeting the expenses of the State government. After all those annual requirements should be satisfied, the residue, or "remainder," of the canal revenues, "in each fiscal year," was to be appropriated under the direction of the Legislature to the Erie enlargement and the completion of the lateral canals. Such were the principal financial dispositions of the Constitution of 1846, and they have a material bearing in the present discussion. The net revenues of the canals at that time were about \$2,800,000 annually, but they soon became less in consequence of a reduction of the tolls upon transportation. It was very speedily discovered that, under such constitutional provisions, the means of enlargement and improvement were quite too slender, and the policy quite too slow to meet the exigencies of commerce and the public wishes and expectations. An attempt was first made to get around the Constitution by a favorable interpretation of its language. It was claimed that the "remainder" of revenue applicable "in each fiscal year" to canal improvement, might be anticipated for any number of years by loans of money, to be contracted on the faith of future "remainders," to be paid therefrom, and entailing no other liability or obligation on the part of the State. This opinion had the sanction of eminent lawyers and jurists, and the Legislature, acting upon these views, in 1851 enacted what was called the nine million loan bill for the purpose of going forward with the public works. But the constitutionality of that law was immediately challenged, the question was brought into the courts, and by a decision of much celebrity the court of appeals pronounced the act to be unconstitutional and void. Disappointed thus in obtaining a favorable interpretation, the people instantly assailed the Constitution itself by the peaceful, and legitimate process of amending it in accordance with its own form and provisions. With great unanimity and with all the expedition which those forms permitted, an amendment was prepared and was adopted early in the year 1854. Under that amendment, loans were authorized to

complete the unfinished public works and the payment of those loans was provided for by a new sinking fund based upon the "remainder" of canal revenues—a "remainder" which should be left after satisfying the requirements already mentioned of the sinking funds for the previous canal debt and the general fund debt. Loans were accordingly made and a new debt was contracted to the amount of \$10,807,000 which is generally called the enlargement debt. While this new debt was being incurred, the former canal debt was disappearing under the operation of its sinking fund before referred to. By means of this new debt and with the aid also of taxation to keep this new sinking fund up to its required amount, the enlargement of the Erie canal, as originally projected in the year 1835, and the construction of the lateral canals were completed. We have here then, three classes of public debt and three sinking funds belonging to them respectively. First, we have the old canal debt of 1846 with its sinking fund requiring annually \$1,700,000 out of the canal revenues until paid or provided for, and this is the first lien on these revenues. Next, there is the general fund debt with its sinking fund requiring now \$350,000 annually and \$1,500,000 as soon as the old canal debt is out of the way, and this is the second lien on those revenues. Lastly, we have the new or enlargement debt contracted under the amendment of 1854 with its sinking fund based on the "remainder" of the revenues. The annual requirement of this sinking fund in order to keep it up to the proper amount so as to pay this debt as it matures is \$1,116,000, and this is the third and last lien on the revenues of the canals. There is no other lien or pledge on those revenues known to the Constitution or laws of the State. There is not another creditor in the world who has the slightest claim of that nature. We can see then at a glance the exact amount for which the canal revenues are now pledged in favor of the creditors who hold the bonds of the State. The old canal debt is reduced from \$17,500,000 to \$3,258,006. The general fund debt remains nearly as it was in the year 1846. Its present amount is \$5,642,622. The enlargement or new canal debt is \$10,807,000, and there is a floating canal debt of \$1,700,000, the exact origin of which I have not examined. These sums, together, make a canal and general fund indebtedness of \$21,407,628. But there will be in the sinking funds on the 1st of the coming October, the sum of \$2,755,595, which will reduce the sum total to \$18,652,107, which is less by nearly five millions than the same indebtedness was in 1846, when the Constitution was adopted. For these debts the public creditors hold constitutional pledges which I am willing to consider sacred. I am in favor of maintaining inviolate the faith of the State. The next great and important fact in the present situation is the fifth section of the financial article of the existing Constitution, which provides that any deficiency in the sinking funds which I have mentioned, shall be supplied by equitable taxation, and that every contribution or advance to the canals or their debt from any source, other than their direct revenues, shall be repaid into the treasury for the use of the State

out of the canal revenues as soon as it can be done consistently with the just rights of creditors holding the canal debt. The obvious meaning of this is that the canal revenues belong in the first instance to the three sinking funds, and do not go into the general treasury until the requirements of those funds are satisfied; but as fast as they are liberated from those requirements then they do go into the treasury for the use of the State. Now it has been quite generally supposed that this provision of the Constitution has effectually tied up the whole canal revenues, not only until the debts are provided for to which they are pledged amounting as we have seen to \$21,409,682, but also for an indefinite time longer, until the canals have earned and paid into the treasury the further sum of \$18,000,000, correctly assumed to be the amount of contributions (interest being included) from taxation to canal purposes since the year 1846. This notion, I perceive, is countenanced in a report of the commissioners of the canal fund to the Legislature of the present year. It is very material now to observe that this is a false, erroneous and most illiberal construction of the existing Constitution. I beg the committee to mark the language used. The contributions from other sources than the direct canal revenues are to be "repaid into the treasury for the use of the State," and this most evidently means for any use whatever of this State. When the canal revenues, in return for the contributions in question, shall reach the treasury they will be there subject to no pledge and subject to no lien or special purpose whatever. The Constitution is absolutely silent as to the disposition which may be made of them, except that they are to be repaid into the treasury for the use of the State. Now, the Legislature has supreme power over the treasury and all that is in the treasury in the absence of express and positive restraint or inhibition, and here is no restraint or inhibition whatsoever. The words, "for the use of the State" are precisely equivalent in their effect and meaning to the words "subject to the control of the Legislature," where no special use of the State is pointed out in the fundamental law. When the canal revenues, therefore, shall be liberated, and as fast as they are liberated from the pledges referred to and shall come into the treasury, they will be there under no restriction and can be used, in the discretion of the Legislature, to build the Capitol, to enlarge the canals or to pay the war debt of the State. Indeed, this provision of the Constitution simply affirms what would be true if there were no such provision. When the revenues of the State, whether derived from the canals or any other source, are not otherwise disposed of they belong to and are payable into the treasury for the use of the State. This is a constitutional and legal conclusion so evident as not to require any further argument. As an advocate, therefore, of a liberal and enlightened canal policy, which I profess to be, I find no very inconvenient restraint under the Constitution as it now is. It is true that just at the present moment, the demands of the sinking fund upon the canal revenues are \$1,700,000 annually, for the old canal debt, \$350,000 for the general fund debt, and \$1,116,000 for the enlargement debt. But the

old canal debt will be fully paid off during the next year, and this will liberate the \$1,700,000 per annum from that pledge. But of the sum thus liberated, enough must go to the general fund to make that appropriation annually \$1,500,000. The result of this is, that as soon as next year, several hundred thousand dollars of canal revenue will be at the absolute disposition of the Legislature. But the sinking fund for the general fund debt, re-enforced as it will be after next year, and carried to \$1,500,000 annually, will extinguish that debt, also in the year 1872, and then some \$2,000,000 of annual canal revenue, will come under legislative control. And finally the required contribution of \$1,116,000 to the enlargement debt sinking fund will pay off that at its maturity in 1878, from which time the entire revenue will be liberated from all pledges whatever, and will be subject only to the constitutional requirement of contributing \$200,000 annually, for the support of the State government. Such are the present financial facts and situation, and such are the existing relations of the Constitution to the great question of improving the public works. Let us now look at the constitutional plan proposed by the finance committee. That committee proposes first, by a very well-expressed provision, to provide out of the canal revenues for the existing canal and general fund indebtedness of \$21,409,682, and so far I have no controversy with them, except that I see no necessity or occasion for providing for that debt any faster than it falls due. A provision for a new consolidated sinking fund to pay that indebtedness, and to pay it only as fast as it will mature, will call, as the committee show, for an annual appropriation of \$2,418,000 and no more, and I fail to see any occasion, therefore, for setting apart annually any greater sum. If there is no disappointment in the revenues justly expected from the canals, this will leave in each year a considerable and increasing surplus for improvement, which may be anticipated by a moderate loan if deemed expedient at such time as this Convention may think proper, or as the Legislature may think proper, if the subject shall be left to the Legislature. But the fundamental objection which I entertain to the plan of the committee is this: In the provisions for keeping the public faith and fulfilling all existing pledges to the public creditors, it provides and declares that the further sum of \$18,000,000 shall be paid out of the canal revenues into the treasury, not for the general use of the State, and subject to the control of the Legislature, but to, be paid out again on the war or bounty debt of the State, thus throwing upon the canals an aggregate burden of over \$39,000,000, to be discharged before one dollar can be expended on their improvement. This war or bounty debt, I suppose every one knows, was but recently created, under an act of the Legislature submitted to, and approved, by the people, and which, according to a requirement of the existing Constitution, provides for the liquidation and payment of the debt by taxation in a course of eighteen years. This debt has not, and never had any relation whatever to the canals or the canal revenues. The holders of that debt have not, nor do they claim to have, any lien or pledge whatever upon

those revenues. They loaned their money to the State relying wholly upon the law which authorized the debt to be created, and upon the resources of taxation which the law and the Constitution itself provides for. That debt is \$26,000,000 in amount. If it were paid to-morrow by taxation, it would amount only to one and one-half per cent on the assessed value of the real and personal property in the State. Its payment is, in fact, distributed through a period of eighteen years. I repeat, the plan of the Finance Committee proposes to charge over \$39,000,000 upon the canal revenues. When this requirement is satisfied, then we are told with a sort of grim mockery that the Legislature may, in its discretion, apply the revenues to the enlargement of the canals or to any other purpose. Any one can make the calculation for himself. Over \$2,000,000 will be required annually to keep down the interest of this large sum, and \$1,000,000 or thereabouts will be left slowly to sink the principal, and certainly over twenty years will be required for the process of complete liquidation. During all this period, longer or shorter, the onward march of improvement will be arrested and held in a continued paralysis. No matter how opinions may change on this subject, no matter how circumstances and necessities may change, no matter how urgent may be the demands of the boundless and growing West for increased facilities for the transit of its vast commerce, we are to be powerless and spell-bound for nearly a generation, or until the people can again revise and change the fundamental law. I pronounce this plan of finance unjust. I mean unjust if we are to regard the State as on one side of the question and the canals on the other. But the State can have no interest separate from its canals any more than it can have an interest separate from its capitol or the lands which belong to its school fund. I will say then it is unwise and impolitic because, unless I am greatly misinformed, the deficit in the sinking funds, by reason of which taxation became necessary, was in a large or at least a considerable degree occasioned by a reduction of the canal tolls under the authority of the State. The canal revenues having been in this manner depleted by the State, I can find neither justice nor wisdom in requiring them to make good the deficit occasioned by that very depletion. But there are some other considerations connected with the question, of a still more decisive character. I do not dispute that since 1846 the contributions from the State treasury to the canals and the canal sinking funds amount, with the interest, to \$18,000,000, as stated by the Finance Committee. But if it be alleged in any quarter that this sum represents a debt due from the canals to the State on an accurate adjustment of amounts between them, then I controvert the proposition. At an early period of this Convention the public officers were called upon to furnish us with a balance-sheet for each of the canals of the State, and a general balance-sheet showing the result of the system from the first origin of the Erie canal. I suppose the resolution was offered in no friendly spirit to the canals. We have the response in the most full and satisfactory form, and the result

as it comes from the grand ledger of the State is eminently worthy of attention. The tables from page 422 to page 449 of part 2 of the Manual laid before the Convention, exhibit a profit and loss account of every canal and slack-water improvement in the whole State; and on page 451 all the balances are put together in one table, presenting the whole subject in a single view. The result is that the canals on the 31st day of December, 1866 were debtor to the State only in the sum of \$7,172,752.60, charging them with the whole cost of their original construction, of their enlargement and improvement, and of their superintendence, repairs, care and management, with interest on every item, and crediting to them the revenues received from them and the interest thereon. Thus, in the twinkling of an eye, eleven millions disappear out of the eighteen millions which it is assumed, in the report of the Committee on Finances, and which it is so common elsewhere to assume, the canals owe to the State. But we know further, so far as we can know any future event, that the canal revenues of the present year and of the next two years will wipe out forever this remaining indebtedness of \$7,000,000, will reverse the balance and turn the canals into a creditor of the State by nearly the sum of \$2,000,000. In the face of these facts which cannot be reasoned away, we are asked to arrest and stay all improvements until our canals shall discharge a burden of over thirty-nine millions of dollars. It would not be difficult to show that if the account between the State and the canals were readjusted upon an accurate basis, the balance to-day of \$7,000,000 against the canals, exists only in the imagination. In the public accounts, producing that balance, the canals are uniformly charged with nearly two and a half millions received from the duties on salt and applied to the original construction of the Erie canal. Now the original duty of one to three cents per bushel intended to cover expenses only, was raised to twelve cents when the Erie canal was undertaken, for the express purpose of aiding in the construction of that work. This was a tax self-sought and self-imposed by the people of the central and western part of the State, to carry forward a great work in which they had a peculiar interest, and no part of the tax was paid by the people of the eastern portion of the State. Until after the Erie canal was constructed the people of that section never saw a barrel of Onondaga salt. Not a barrel of it reached the tide waters. This tax or duty was a special fund raised and created to build the Erie canal, and raised out of the industry and resources of a particular portion of the people, and in which the remaining and more populous part of the State had no concern whatever. On what principle this large item can be charged, as it always has been in an account between the canals and the people of the whole State, has never been shown, and I believe it never can be shown. Now, if we subtract this single item from the accounts and compound the interest, the balance in favor of the State is gone forever. But let it remain as we find it on the State ledger, and still the result of our canal system is eminently satisfactory. We find that these

vast undertakings first commenced but a little more than a generation ago, involving from time to time, and down closely to the present period, an original expenditure of almost seventy millions of dollars, have already paid the interest amounting to a still larger sum, kept themselves in repair, paid for superintendence, and reimbursed the principal into seven millions. And this has been done in spite of wastefulness, extravagance and corruption, by which millions have been sunk. Two and a half years more will reverse the balance sheet and turn the result the other way. How few private undertakings on a large scale can present a better result. And in this mere commercial estimate of profit and loss, no account whatever is taken of the incalculable sum which the canals have added to the wealth and resources of the State. But the present question, if I correctly appreciate it, relates not to the general canal system of the State, but to the Erie as the main trunk canal and two of its adjuncts, the Oswego and the Cayuga and Seneca canals. Such being the question, each canal is entitled to stand upon its own merits. Now, the Erie canal by itself so far from being a debtor of the State is a creditor in the sum of more than \$23,000,000. I beg leave to call attention to table No. 1 of the Manual already mentioned, which presents the combined result of the Erie and Champlain canals; charging them with the entire cost of construction to this time, and interest thereon, with superintendence, repairs and interest thereon, and crediting them with tolls and interest, and the result is a balance of over \$23,000,000 in favor of those canals. In this accounting they are also charged with the contributions to their tolls received from the tonnage transferred to them from the lateral canals. This is the result of the two canals combined. But another statement sent to the Convention in response to a resolution, and which is among our documents, has separated the Champlain from the Erie canal, showing that the Champlain is a debtor in the sum of half a million of dollars or over. Thus it appears that the Erie canal has returned to the State every disbursement from the time the first spadeful of earth was removed in its construction to the present, and in addition has paid into the treasury the sum of at least \$24,000,000. Regarded then as a public investment, it has made dividends equal to the annual interest over all expenses, reimbursed the entire capital and paid the magnificent sum of \$24,000,000 in addition. That in other modes it has added more than ten times that sum to the wealth and resources of the State, I presume no one will question. So much for the Erie canal. As to the Oswego canal, as every one knows, it forms its junction with the Erie at about the center. At the port of Oswego it receives the productions of the West by the lakes, and the Welland canal in Canada, rivaling Buffalo in the western trade. The same tonnage, after passing through the Oswego canal, some forty miles in length, is passed down the Erie canal some two hundred miles to the tide waters of the Hudson. For reasons too obvious to escape notice, its locks and prism should be of the same capacity as the Erie, so as to admit the

passage of the same boats. This canal, too, so far from being a debtor to the State, is a creditor in the sum of about \$3,000,000. It has paid that sum to the State, after reimbursing every dollar expended for construction or enlargement, superintendence and repairs, and the interest thereon. It is the most important commercial feeder of the Erie canal, and upon any question of further improvement is entitled to the same favorable consideration. And the same argument applies to the Cayuga and Seneca canal, a channel of only twenty-one miles in length, connecting the Erie canal with the waters of Seneca lake. This has become a canal of great importance to the interests of nearly the whole State. The coal from the mines of Pennsylvania is brought by rail to the head of the lake, and is there transferred to boats and passed down the lake some forty miles and through this canal to the Erie, which thus receives an annual contribution to its business of some six hundred thousand tons annually. This coal, in large quantities, is carried eastward and westward through the whole length of the Erie canal. One hundred and thirty thousand tons are annually brought to the salt works, and there consumed in the manufacture of that article; and I know very well that this important manufacture is mainly sustained by the cheapness of fuel obtained through this channel. The immense business of this short canal has been so recently developed that it still remains a debtor to the State in the small sum of \$123,000. But that debt is now in process of rapid liquidation. Its tolls proper and its contributions to the Erie canal last year amounted to \$101,000, while the expense of repairs and superintendence were less than \$18,000. The results of the present and the next year in all will make it the creditor of the State. It needs no argument to prove that, whenever we enlarge the locks or the prism of the Erie canal the inexpensive outlay required for the similar enlargement of the Cayuga and Seneca should also be incurred without hesitation. The prejudice which to some extent exists against further expenditure upon the canals and in some, perhaps many minds, prevents even a fair examination of the necessity of such expenditure is blind and unmeaning because it does not discriminate between the different canals constructed under separate and different laws. There are three or four expensive and, to the State at large, profitless canals which have brought undeserved reproach upon the whole system. The Chenango canal originally cost \$2,782,124. Crediting that work with all the tolls derived from it, including contributions to the Erie canal and charging to it the cost of construction and maintenance and allowing interest on both sides of the account, it is now a debtor to the State in the sum of \$8,223,431. Last year its tolls and contributions were \$30,500, while the expense of maintaining it was about \$90,000. The Black River canal originally cost \$3,224,779: It is now a debtor to the State in the sum of \$8,108,000. Its tolls and contributions last year were \$27,000, while the cost of maintenance was over \$45,000. The Genesee Valley canal originally cost over \$5,800,000. It is now a debtor to the State in the sum of \$14,301,000.

Its tolls and contributions last year were \$40,000, while the cost of maintenance was over \$100,000. Thus we see the balance sheet against these three canals in the aggregate is over \$30,000,000, and two millions more may be added on account of the Chemung and Crooked Lake canals, making an apparent loss of over \$32,000,000 to the State, on account of these lateral works. As already stated the loss is reduced to \$7,000,000 by the direct profit derived from the Erie and Oswego canals. I have no proposition to make for the abandonment of these unprofitable lateral canals. Local interests may be involved and there may be reasons other than financial for maintaining them. But I ask gentlemen representing sections of the State on or near these canals, to consider these facts. From them more than all others we have a right to demand a favorable consideration of this improvement question. I say to all such, your lateral canals could not have been built but for the revenues derived from the Erie canal, which is, therefore, in all circumstances, entitled to your most favorable regard. The present question I repeat is mainly one of improving further the grand Erie Canal, which connects us with the immense and fertile regions of the West, of improving a great artery of trade, which is pouring riches into the lap of the State. It has no relevancy whatever to that question, to allege and prove that the State has other costly works which have been unprofitable. If the Genesee canal is debtor in the sum of fourteen millions, the Erie is creditor in the sum of \$24,000,000. As well might a farmer refuse to ditch and drain a fertile valley yielding a rich and golden harvest, and promising still greater abundance, because he has a barren hill on which labor and toil have been spent in vain. Given the postulate that our great channel of trade is capable of a further enlargement with greater usefulness and profit to the State, and the whole question is solved. In the consideration of this question, we must contemplate not only the necessities of the present moment, but also the wants of the immediate and more distant future. I am not very apt to be carried away with poetic visions. But I have a sober sense of the advantages, and future greatness of the commonwealth, whose honor and interest are in our hands. I cannot think of any spot on the habitable globe, so favored in all the circumstances of natural situation. In one direction we look out upon the broad Atlantic, over which is borne to us the commerce of the old world. That commerce naturally seeks our great commercial metropolis, resting as it does upon a harbor in a genial climate, where the navies of the world might ride at anchor. Behind us, in the other direction, lies the almost illimitable West, whose rich and fertile plains stretch from the inland seas on our border toward the base of the Rocky mountains. The productions of that vast and fruitful region find their natural outlet to the ocean through the lakes, and across our soil. The hand of nature has stretched through our territory and to our commercial city a channel, surpassing in its advantages any other on the continent, and which may defy all competition, if we remain true to ourselves, and continue to improve those advant-

ages. Fifty years ago, when the West was almost a wilderness, the far-seeing statesmanship of De Witt Clinton, and others of less historic renown forecast the destiny which we have realized, and the greater destiny which yet lies before us. The Erie canal was then commenced in the midst of contumely and reproach. It was finished in 1825. In ten years more the rapidly increasing commerce which it attracted, determined the necessity of enlargement. The enlargement was begun, and was prosecuted, and at last completed through difficulties and embarrassments, through panics and opposition. Such has been our policy, interrupted at seasons of commercial distress, by the real or supposed necessities of the public credit, but finally consummated, and the results are before us. The population of what we call the Western or North-western States, in 1825, mostly territories then amounted to only 1,000,000. They are now inhabited by ten millions of souls. The commerce of the lakes then scarcely existing, is now valued at more than \$500,000,000 annually. The arrivals and departures at Buffalo, our principal commercial lake port, which in 1825 were only sixty-four, in the year 1866 were over fourteen thousand. Under the influence of this increasing commerce, our metropolis has reached already the third place among the cities of the civilized world, and is rapidly advancing to the first rank, while our State has reached the proud and imperial position she now occupies. There is yet a grander destiny within our reach. The West is yet in its infancy. There are those in this Convention who will see the population of the States now tributary to our canal reach twenty-five to thirty millions of souls, and the generation which will take our places will most likely see it increased to fifty millions. Not one-fifth of that extensive region is yet reduced to cultivation, and stretching beyond the organized States to the base of the Rocky mountains lies another region of equal extent and of immense, although undeveloped, fertility and resources. Beyond this and across the mountain chains lie the rising States of the Pacific slope, between which and us the means of interior communication by railroad and steam-power are rapidly progressing, and soon to be consummated. No one can fail to see an immediate revolution in the commerce and intercourse of those large and rapidly growing States with the East. Instead of traversing the torrid zone and rounding the stormy cape at the extremity of South America, or crossing near to the equator, the Isthmus which connects the two continents, that commerce must inevitably take the direct and inland route toward the Atlantic coast and pour its exhaustless riches into one lap. More than this, the ardent imagination of my venerable friend from Erie [Mr. Hatch] still warm with the fires of youth, in the glowing report which he has read to us, has stretched even across the Pacific to regions where the occident and the orient meet regions which are peopled by nearly half the population of the globe. He has pledged to us the commerce of China and Japan. This may not be all imagination. Those who are better acquainted with great commercial movements than I am, those whose pursuits and

studies more than mine have invited the examination of such questions, can judge better than I can whether a change in the commerce of the world is not impending. It is certain that steam lines across the Pacific, and railroad communication soon to be opened across this continent, will bring Eastern Asia and the British Isles and Western Europe much nearer to each other than they have yet been. But there is no occasion, Mr. Chairman, to indulge in anticipations that are doubtful. The results and the realities around us are enough to inspire us with energy and courage and hope, while we move on with prudence and caution. Upon the exact and practical question when and where the further improvement of our great artery of trade should commence, what sum of money should be expended upon it, or when and how fast it should be expended, what are the necessities of the present moment, and how soon those necessities will become urgent, I feel my incompetence to instruct this Convention. If there is danger in delay, let us delay no longer. My purpose in what I have said has been to invoke a favorable consideration of the merits of the pending question, to suggest the reasons why we are not to bind up the strength and energies of the State by constitutional provisions, to relieve the subject from its supposed financial complications, and from the prejudices which have attended it from the first origin of those noble public works which have done so much for the prosperity and honor of the State.

Mr. DUGANNE—Mr. Chairman, we believe in the inspiration of prophets, and we are told that heroes, divines and poets have their moments of inspired power and fervor. I think sometimes that the sound political economist, the skillful financier, who, like Colbert, or Pitt, or Hamilton, or Chase, strikes out some sudden salvation for a bankrupt nation, must also receive inspiration for his work. And, sir, if ever a statesman was inspired to flash forth and make patent to the world a scheme of enterprise and utility destined to enrich his country and develop the resources of a continent, that statesman was the honored father of a respected member of this Convention, whose name illustrates the integrity and intellect of three generations of our State, as it irradiates the history and patriotism of our common nation. Need I pronounce the name of Clinton to remind the Convention of him whose monument is built from the Niagara to the Hudson, and whose policy has been and must remain the princely beneficence of three millions of people dwelling between Lake Erie and the sea? Sir, the Erie canal was a legacy of genius to industry. It is not the amount of tolls that you can levy upon its waters; it is not the sources of direct revenue that you may open by its channels; it is not the immediate advantages or convenience that canals may prove to those portions of the community dwelling upon their banks; but it is the ability which you shall create in the people at large through those avenues of commerce—the ability to meet the expenses of government; it is the general and diversified prosperity that you insure the community by providing public facilities for the distribution of

wealth throughout the State—it is this, sir, that should be the gauge of the value of such works and the measure of their usefulness to us and our children. You may talk of trade laws, of trade balances, of specie standards, but you cannot dispute the plain proposition that the cost of a barrel of flour is the universal criterion, the inflexible *par value* which regulates the price of labor and the extent of enterprise. If, by any untoward deflection of the great course of traffic from the central and western cities of our State, the route of a barrel of flour from its granary to its market shall be made a circuitous instead of a direct one—if the paths of transportation, instead of being marked by our Erie canal, should at any time hereafter be described by rival lines, so that the consumer in our western counties must wait until some distant center of trade or distributing mart shall dispense to him what he needs—burdened by increased freights and enhanced cost—where shall we look, sir, in that event, for the general and equable prosperity that should cheerfully bear the burdens of taxation and exult in the ability to do so? Sir, the eloquent gentleman from Richmond [Mr. Brooks] has reminded us of the immense resources of the great North-west, and the prospective population and prosperity of the vast inland sea-board expanded by our magnificent lake system, which he aptly designates our "Mediterranean seas." It is a picture worthy of contemplation with pride and with hope. We of the Empire State—we, who dwell in the city of New York, have a momentous interest in this matter, and it is because I cannot help recognizing that the future of our metropolitan city, as well as the future of our large State industries may be deeply and vitally involved with the policy which we, as a people, shall decide upon in reference to the Erie canal—it is because of this conviction, sir, that I would call the attention of the Convention to the possible consequences to us that may yet follow the wondrous strides which the North-west is making day by day and year by year toward the commercial conquest of this mighty country. Mr. Chairman, I cast my eyes over the map until they rest on that immense river of the Mississippi, which drains the half of our continent and fertilizes the valley wherein fourteen great States are linked by the bonds of mutual commercial interest. The first fact that meets me in association with this is the extent of transit incident to the passage of a bushel of wheat from its granary at St. Paul or Winona, by barges, in the first place, to some railroad depot, there to break bulk and be elevated for transshipment—thence by rail to Chicago, there to break bulk again and be elevated; thence, through the long lake journey, to a depot at Buffalo, there to break bulk and be elevated again, and be thence transported through our canals and river to the sea-board. Now, sir, a comparison of western railway tariffs with the tolls charged on our canals for like distances shows that it costs three times as much to transport grain on western railroads as it does by the Erie canal; and it has been estimated by business men at the West that if competing canal lines could be created along their principal arteries of transportation, there would be a direct

and immediate saving to the people of the West, on present freights, of sixteen millions of dollars per annum. Sir, howsoever regardless we may be of the immense *gains* to our State, by her water highways, the people of the West are not regardless of the *losses* they sustain by the want of such water highways. Sir, the people of the West appreciate what they are *losing* annually by this lack of canal competition with railroads, although we of the North, do not yet seem to realize how much and how constantly we are *gaining* and saving through the workings of that magnificent canal system which the far-seeing patriot and statesman, De Witt Clinton, inaugurated and bequeathed as a precious heritage, to his State and to posterity. But, sir, the people of the North-west, in recognizing the enormous burdens imposed upon them by the lack of canals and the monopoly of railroads, recognize also a kindred fact, that even the immense chain of railroads which intersects the highway States, is not yet equal, and can never be equal, to the demands of their imperial country for future transportation. Although, within a period of seventeen years, the number of railroad lines has increased from seven to thirty, yet, sir, in the face of all drawbacks of increasing freight rates, the demand for transportation steadily leads the capacity of railroad thoroughfares. In spite of high charges, in spite of delays and accidents, the enormous figure of 58,000,000 bushels of grain, and nearly 400,000 tons of merchandise seeks an annual passage from the West to the East, and relatively from the East to the West. Behind this mighty pressure of freights the development of the North-west crowds with new force and impetus. Farms enumerated by the hundred thousand, towns and cities by the hundreds and scores, stretch out and spring up wherever the plow can trace a furrow. Population and prosperity march hand in hand to the shores of the Pacific ocean. But, sir—and here the question of transportation approaches us nearly and vitally—the people of the North-west have resolved that their avenues to market shall not be kept by those modern barons of the highway, who intrench themselves upon the railroads, as their feudal prototypes fortified themselves in their castles, and exact tolls from all hapless merchants who are obliged to pass their iron strongholds. Glance at the map, and follow the line of the Illinois and Michigan canal from Chicago to La Salle, one hundred miles west toward the Mississippi. From the terminus of this completed work you will find the route surveyed for a new and capacious water-way—only eighty-five miles in length—which is to reach the Mississippi at Rock Island, there to create a great river *entrepot*, and thus make a direct communication between Lake Michigan and the mighty Valley. Corresponding with her efforts to establish this channel of trade, the North-west presents her demands in Congress for the improvement of the rapids of the Mississippi at Keokuk and Rock Island, which improvement is all that she requires to open a free water highway from the Upper Mississippi to the Gulf of Mexico. Anticipating the success of these measures, far-seeing business men are already

erecting elevators at various points on the Mississippi, from Cairo to New Orleans. Far-seeing commercial men hesitate not to predict that the Mississippi river, with the States which she nourishes at her valley bosom, will be hereafter the main highways to market of the cereals and minerals of the North-west. They base their assumptions upon the fact that the West, the South, and the South-west are destined to grow into dense manufacturing as well as agricultural communities, which must be fed by the corn-raising North-west. They base their calculations on a belief that the New England States and the State of New York have reached or approximate to their maximum of population, while, on the other hand, the younger members of our sisterhood of States and Territories, west of the Alleghanies, have but lately set forward rejoicingly upon their pathway of empire, growth, and limitless productiveness, as well as population. Hence, they say, "Let us give to the West such a canal system as has enriched New York, and built up her throne of commerce. Let us direct the tide of traffic and transportation. Let us create and seek our markets at every point, from the waters of Lake Michigan to the waters of the Gulf. Let us open and command our own avenues of commerce from Minnesota, Iowa, Wisconsin, Northern Missouri, Kansas, Illinois, and their sister States." With these views, with these anticipations, the genius of the North-west projects her internal lines of navigation, by canal and river, from Lake Michigan downward to a market or the sea-board. Now, sir, I shall not argue for or against the validity of these assumptions. It is sufficient for me, as a practical man, to know that at this very time the poise, if I may so term it, of trade hangs trembling between the North and West. I have cited the fact that by circuitous routes, in the face of delays and dangers, and high rates of insurance, and at a cost of from one hundred to two hundred per cent, a bushel of Minnesota grain plods its devious way to the Atlantic sea-board. And the bulk of freights is, as we know, by water rather than by rail, since the reports of the Chicago Board of Trade show that the shipments by rail to points on Lake Michigan is about 1,000,000 bushels of wheat against 8,500,000 by lake; while the disproportion as applied to corn is as one-half to twenty-four and one-half. And this suggests a significant truth regarding the competition of steam on water with steam on land; since the choice of transportation as above was obviously influenced by the fact that lake freights for wheat and corn range, during the season, at from four to fourteen cents per bushel, while rail freights, fourth class, from Chicago to Buffalo, range from twenty-five to seventy cents, accordingly as the iron hand is loosed or tightened. Now, sir, between the Scylla of railroad extortion on the one hand, and the Charybdis of maritime perils, high insurance, and canal delays on the other, in their transit to the East, the products of the great North-west have not always found a "royal road" to market. How, then, if the enterprise and capital of the West, combining with State aid to construct and improve great water highways, shall attempt to divert the vast tide of internal commerce which

now sets toward the sea-board marts of New York? How, then, if, at the same time, our lack of appreciation, or our laxity of interest, shall permit a perpetuation of some "penny wise and pound foolish" policy in relation to the internal navigation of our own great State? How, then, furthermore, if on the plea of economy, or on the cry of retrenchment, or at the menace of protracted indebtedness, we shall pause in supine indifference, or satisfy ourselves with easy excuses, until a time comes when the bulk of North-west trade shall be suddenly and irrevocably cut off from the East, and we discover, too late, that, like the clown in *Æsop's fable*, we have killed the goose that laid us golden eggs—destroyed the subsistence of our canals through a mistaken economy, and left the cities on their banks—which are now as Palmyras on the highway of caravans—to become but ruined Tadmors in the wilderness, to illustrate a fallacious political and financial policy? I apprehend that the "clamor about canals" which I have heard, offends the delicate ears of some gentlemen upon this floor, will then be heard no more. The strife between Buffalo and Oswego will cease. The struggle for a Niagara ship-canal will be over. There will be silence then, sir, but it will be the silence of stagnation; there will be quiet, but it will be the quiet of decay! Sir, when I contemplate that line, as the bird flies, which runs from the foot of Lake Erie to the foot of Lake Michigan, and thence to the Father of Waters, I cannot but think that it describes what may be termed the watershed of traffic between North-east and South-west. The city of Chicago sits throned upon that commercial watershed, and her realm lies naturally to the West and the South. Let us take heed lest, at no late day, she shall assert that empire and repudiate her subordination to New York and the East. It is for the far-seeing business men, the prescient statesmen of New York, to see to it that no contracted views of public economy, no vacillating course of State policy, no timid subserviency to what may be assumed as popular opinion, shall influence them to trammel the future of our State by constitutional restrictions which may be as clogs to her feet and fetters on her hands forever. Give us a wise and liberal, a comprehensive and flexible policy of improvement for our canals, and an inexorably honest administration of their affairs. Repeat for us no "stop policy" which, at some crisis of competition between commercial sections, some giant wrestle for the scepter of trade between North and West, shall interpose, with paralyzing effect, to cripple our strength and overthrow our boasted supremacy in the market. Look once more with me on the map, at that bee line across the States of Michigan and Illinois, which I have termed the watershed of commerce between North-east and South-west. Only one hundred and thirty miles of isthmus, so to speak, intervenes between these two great inland seas, Lake Erie and Lake Michigan. Supposing that, at some not distant day, the genius and wealth of New York city shall recognize the utility of opening a ship-canal to connect the lakes at their bases, between Toledo and Michigan city, thus bringing Chicago within 450

miles of Buffalo by water, in lieu of her present navigable distance of over a thousand miles around, by the dangerous circuit of northern lakes. Supposing, I say, this great work projected, and that watershed of commerce brought within forty-eight hours of the Erie canal, so that New York in the future, as in the past, might dictate and direct the traffic of the Upper Mississippi. And at that crisis, sir, when some new De Witt Clinton, with the courage and energy of his giant predecessor, shall reach out his hand to cleave the earth and let a new stream of traffic into our empire State—supposing then, I say, that he shall be pointed to the Constitution of 1867, and be commanded to "stop there!" "You shall not grasp the Mississippi, you shall not drain her valley, for the Erie canal locks are pigmies, and giants have no business with them." But, sir, whatever may be our policy—whatever our political economy—I say to you here that the great North-west will have her right of way to the ocean, whether we will it or not. If she cannot secure it to the North, by the Erie canal and New York, or by a Niagara ship-canal and Canada, she will open it to the South by the Mississippi and New Orleans, and it may be by Chesapeake bay and Baltimore. It is not the North-west that must permanently suffer by the blindness of New York. If we choose to put out the eyes of our Samson, and shear him of the strength which lies in his locks, we must bear the consequences alone, our Phenicians of the North-west will not be crushed by them. But I am instructed by expounders of the "laws of trade," that New York has nothing to fear for her supremacy, even though our western cities dwindle into villages and our canal ditches be filled up for railroad tracks. I am told that New York city can smile at every effort to divert the flow of commerce from her marble marts, because her geographical and maritime position guarantees her future as it has her past. Sir, I am well aware that the goddess of fortune has no affections, and her votaries no sympathies. I know that the yellow-robed courtesan of traffic welcomes all lovers to her couch, and that the gold of a stranger is dearer to her than the smiles of her next of kin. Hence I am not surprised that the commercial sovereigns of New York city are not disquieted by the threatened rivalry of a Niagara ship channel for the carrying trade of the Erie canal. "All is fish that comes to the net of New York city," say our friends of the Chamber of Commerce, while they await the swelling of each shifting tide and the freightage of each changing current. But, sir, the tide may not always set so strongly for the piers of Manhattan. A ship-canal around Niagara Falls may involve other interests than those of New York city. The project of that great work comprises the provision of very great facilities for an unbroken transportation. The locks of this proposed ship-canal are to be 250 feet in length by 50 in width, and the capacity for tonnage equal to a draft of 14 feet. In connection also with this enlarged water-way, the flats of St. Clair river are to be channelled to a corresponding depth and width, so that the navigation for vessels drawing 14 feet of water shall be unimpeded

from Lake Michigan to the St. Lawrence. And Canadian capitalists have taken steps toward the enlargement of those auxiliary canals which already, to a certain extent, avoid the obstructions of their great outlet to the ocean. Now, sir, if under the pressure of commercial necessity, the St. Clair flats shall be improved, the Niagara ship-canal constructed and the St. Lawrence made navigable for ships to the sea, what "law of trade," what "balance of exchange," I ask, can prevent the breadstuffs of the North-west—freighting the largest grain vessels of the lakes—from seeking their own markets through the St. Lawrence, and making Portland an *entrepôt* instead of the city of New York? Sir, the great North-west will then have two water highways to the sea, and may choose between two great gulfs to find an outlet for her voyages—not to New York city alone, but to the markets of the world. And will New York city have nothing to apprehend for her supremacy, when Portland, with its spacious harbor, only waits for such a catastrophe as the triumph of railroads over canals, in New York State, to cast out her iron rivalry to Lake Ontario, and combine with Oswego, at some future day, to intercept the Western trade that now flows directly to the Hudson? Will New York city have nothing to fear, should the enterprise and wealth of British capitalist, backed by government subsidies and stimulated by national pride, be enabled to make Lake Nipissing, which lies 150 miles above tide-water, a grand feeder for ship-canals that may unite the Georgian bay and the Ottawa river, and bear the commerce of half a continent down the majestic St. Lawrence, to build up the ancient cities of Montreal and Quebec, at the expense of our Atlantic sea-board, which lies more remote from the great ocean highway to European markets? Does not the Atlantic cable suggest a lesson, when we reflect that it sought its cis-Atlantic terminus on the extreme point of Newfoundland, in order to shorten the distance of its submarine bed between the old world and the new? May not commerce seek likewise to shorten and straighten her own paths? For my part, sir, I am seriously of opinion that our queenly commercial capital, of which every New Yorker and every American feels so justly proud, may have cause to fear many rivals in the future. Ancient Tyre was omnipotent in commerce before her daughter and her rival, Carthage, contested for Mediterranean sovereignty. Carthage was without a competitor until Rome compassed her ruin. The scepter of trade must be grasped by a firm yet flexible hand if it would sway the empire which it assumes. That scepter is now in the hold of New York city. That scepter is the Erie canal. I cannot believe, sir, that New York will yield it without a struggle. And it is certain, sir, that the grain-growers of Minnesota, Iowa and Northern Illinois will always cast about for a way to foreign markets? We know, indeed, that the price of a barrel of flour now varies from two to three dollars between Chicago and New York, such variation representing the cost of transportation between the two cities. We know, likewise, that a bushel of corn may bring only fifty cents at some point

fifty miles west of Dubuque, and that the grower is content to sell at this figure rather than risk the contingencies of an Atlantic market. I have heard, indeed, that corn at more remote point has been sold for eight cents a bushel and consumed for fuel. But is fifty cents a bushel for corn to be the ruling price west of the Mississippi? When the Pacific railroad shall penetrate the South Pass, when it meets the advancing grade from California, when the trade of the entire Rocky mountain region, embracing Montana, Dakota, Idaho, Utah and Upper Colorado, shall be poured into the Mississippi's lap, is there to be no market for the North-west save only that which waits at the mouth of the Hudson? Do we not know that scarcely one-half a tithe of the rich soil of the North-west prairies has been yet upturned by the plow, and that the yield on cultivated lands is hardly one-half what it might be? But who shall circumscribe either the production or consumption of that wonderful country traversed by Mississippi and Missouri? With emigration flowing through fertile valleys and over rolling savannas at the rate of a quarter of a million annually—with a basis of present population numbering 13,000,000 souls; with skill, and labor, and industry, and enterprise; with water-power, coal, lead, iron, machinery, and capital,—what is to forbid the West and South-west from mingling the smokes of manufacture and the ringing iron of mechanic arts, with the fragrant atmosphere of fields and the gold and silver of corn and cotton? In that day, the producer of the North-west will not be compelled to give seven out of thirteen bushels of corn, in order to pay for its carriage to New York and a market. In that day, we shall not hear of a cargo of California grain being sold at Philadelphia—with a large profit to the San Francisco shipper—at prices below the bare cost of transportation from Chicago to the sea-board. But, Mr. Chairman, I am not yet prepared to anticipate a dissolution of that grand commercial partnership between New York and the West which has so long been the bond of their mutual strength and prosperity. I cannot believe that we shall adopt any course of policy calculated to divorce the interests of Chicago from those of our commercial metropolis. I would rejoice to see Chicago become for the West, what New York city is now for the continent; but I do not want to see Chicago become our commercial metropolis, the antagonist of New York city. Rather let me hope, rather let me predict, on the other hand, that the forewarned and fore-armed business-men of our State—encouraged by good political counsels—will take timely measures to widen and broaden the gates of entry to our markets, to the end that whatsoever improved channel of transportation may be opened northward from the Mississippi Valley, shall be met and welcome with corresponding facilities of transit across our teeming territory to the sea-board. Rather let me trust, sir, that in lieu of dangers, risks and delays of a roundabout lake navigation, or the extortions and impositions of railroad transportation, there will be wide water highways tapping the sources of production, and connecting in a straight unbroken line, with Lake Erie and our canals; so that breadstuffs of all kinds can

be shipped from Iowa and Minnesota to New York city, with but one breakage of bulk, and that at Buffalo; so that, in effect, no "handling" of grain *in transitu* shall be necessary except at one grand *entrepôt*, where handling will only appreciate its value before final shipment to market; so that, finally, *cheap carriage and cheap freight*, shall be the guaranty of *cheap bread*; and cheap bread the security of our contented and thriving population. Sir, if I might be permitted to anticipate that our clear and broad foresight shall insure such a future for New York city, as well as for the Erie canal, I think I could answer for it also, that the Chamber of Commerce of that great emporium would not be the last to take possession of the field or to turn it to speedy advantage. I am aware, Mr. Chairman, and I do not undervalue the fact that, the gaunt shape of taxation, arising before us with lifted finger, is no phantom of the imagination, either in State or nation. I deplore all squandering of public means, all questionable increase of public indebtedness or expenditure, whereby the burdens of government press heavily down, as they inevitably must, upon the shoulders least able to bear them—the toiling millions of the people. But, sir, I do not look upon taxation as an unmixed evil. The clouds that gather above us, in the heavens, dark as they may seem, dense as they may be, have yet their golden edge and silver lining. Those clouds, sir, are taxes of the earth, to support the great economy of nature. They suck up the exhalations from myriad fields and hillsides; they absorb the mists of morning and the dews of eve; but they do not rob the earth, they despoil not the meadows which they assess: for, through the wonderful chemistry of the skies, they return in fertilizing showers, they are dispersed in rivulets and rivers; to make the wilderness blossom as the rose, and the harvest-fields laugh with fatness. Even so, under a wise economy of public administration, the revenues of government, applied faithfully, legitimately, and honestly, may return sevenfold to the people, and produce new fruits of general prosperity. I would have the financial exigencies of the State provided for without lavishness, without niggardliness. I would have every public servant held to strict account for the disbursement of official money. I would have such a wise economy, as a rule, applied to governmental matters, as a good business man applies to himself and his affairs. But, sir, I deprecate a constant invocation of the specter of financial ruin. I condemn the timid and impolitic counsels which tend to paralyze energy and destroy the confidence that alone sustains all public and private credit. Let us be brave, let us be hopeful, let us be sensible. This commonwealth, whose citizens, in their towns and counties, by their own volition, created a debt of more than \$200,000,000 in aid of the union, for which they mortgaged their property and pledged their credit—a debt which they have already liquidated to one-fourth of its original proportions—such a commonwealth, such a people—may God prosper them!—will always, I am sure, be equal to the future as they have been superior to the past. We may trust them, sir. We can trust the people, sir, and rest assured that they will

cherish and preserve the legacy of our Erie canal, bequeathed by the fathers of the State, as they have cherished and exalted the heritage of liberty intrusted to them by the fathers of the republic. I hope, then sir, that no "stop policy" will be incorporated with the Constitution which we are revising. Let the canals be intelligently fostered, liberally maintained and scrupulously guarded. Let us invite the great North-west to remain, as she has heretofore been, and is now, the commercial partner of New York; and to that end let us afford her all possible facilities of transportation consistent with the obligations which we owe to our credit and solvency as a commonwealth. Sir, I would have our canals the guaranty of their own improvement. I would have their earnings, year by year, above the interest accruing on their own indebtedness, and with a moiety, perhaps, applied on the principal, faithfully and regularly appropriated for such improvements as the demands of our present and future trade shall indicate. I would have every dollar of those earnings strictly accounted for and its honest disbursement rigidly enforced. And then, sir, when the day comes for payment of every outstanding liability, I doubt not that the people of the State, acknowledging their own indebtedness to the canals, and enabled by their augmented prosperity to "pay as they go," will cheerfully wipe away all canal debts, and throw open their waterways to that generous competition which insures cheapness and restrains monopoly. I am willing, sir, to leave the canals to the people, only asking that neither the people's will nor the people's markets shall be forestalled by unwise constitutional restrictions.

Mr. SPENCER—My excuse for occupying the attention of the committee at this time is the assumption on the part of several of the gentlemen who have spoken upon the question of finance and the canals that the lateral canals, so called, are a burden and incumbrance upon the general canal system and upon the finances of the State. This assumption, so far as regards the Chemung canal, I desire to repel, and to show, as I think I shall be able to do, that the assumption is founded in misrepresentation, in falsehood and in fraud; and the evidence upon which I base this proposition is to be found in the very tables and the very figures upon which the assumption is founded. But, sir, before I proceed to that question, I desire to call attention for a moment to the location of the Chemung canal and its relation to the other canals of the State, and to show that the policy which is proposed here, both by the Committee on Canals and by that on Finances, proposes to shut up that canal entirely, so as to prevent the enjoyment of any benefit from its use, either by the State or by those who may seek to employ it. The Chemung canal connects the waters of Chemung river upon the south with those of the Seneca lake upon the north, and its main line is twenty-three miles in length. It is further connected with the Chemung river by a navigable feeder extending from the village of Corning to its junction with the main line at the village of Horseheads which is fifteen or sixteen miles in length, making the entire length of the Chemung canal and its feeder thirty-nine miles. The wa-

ter communication from the head of Seneca lake, the north termination of the canal, is through the Seneca lake thirty-seven miles and from the foot or northern end of Seneca lake through the Cayuga and Seneca canal twenty-one miles, making altogether a navigable communication from the Chemung river to the Erie canal of some ninety miles. Now, the proposition is to further enlarge the Cayuga and Seneca canal and at the same time forever to preclude the Chemung canal from any improvement. And I submit to the gentlemen of the committee that this policy will entirely close the Chemung canal. This line of navigation should be considered what it really is as one line of water communication; and it is true as a matter of fact that two-thirds, if not a greater proportion, of all the tonnage which passes through Seneca lake and the Cayuga and Seneca canal proceeds from the Chemung canal; and if there is a necessity for enlarging any part of this water communication that necessity applies as well to the Chemung canal as to the other parts of it. Now, what will be the consequence of having the northern portion of this water communication enlarged while the southern portion remains in its original condition? It will be that the large boats employed upon the Erie canal and other enlarged water communication, will navigate only to the head of Seneca lake, the northern termination of the Chemung canal, while small boats only can navigate the latter. And there must be at its northern terminus either a transshipment of the property upon it, or else the property must be delivered there by some other means. In fact, the Chemung canal, for its whole length, both of the main canal and of the feeder, has a railroad right along its banks, and does anybody acquainted with the subject believe that, with railroad transportation to this point and with the enlarged navigation beyond it, any mode of transportation upon that canal with its present size could be pursued in competition with the other means of transportation? Indeed, the fact is already realized since the Cayuga and Seneca canal has been enlarged, that the tonnage of the Chemung canal has been diverted, to a large extent, from the Chemung to the railroads along its banks; and whenever the small boats now in use are worn out it will be driven entirely from it. And therefore, it is, I say, that the policy which is recommended here, both by the Committee on Canals and that on Finances, will entirely close the Chemung canal, and you will have a policy in your Constitution which provides, in the first place, that these canals, including the Chemung, shall remain the property of the State forever, and by which the State will be bound, under further provisions, forever to keep and maintain it in repair, and yet puts a stop entirely to any use which can possibly be made of it. If this policy prevails during this whole time you will have to maintain a superintendent to patrol its banks, and at every lock you will be required to keep one or more lock-tenders to stand upon duty day and night. Under no provisions embodied in either scheme presented by these reports can any improvements whatever be made upon this canal, or any expenditure except for ordinary repairs. Even if a

supply of water should be required beyond what is now furnished it could not be supplied. If a dock should become necessary in consequence of the increasing demands of trade, if this were possible, under the policy which is recommended, no dock could be built. If a basin should be required for the necessities of commerce, this work, too, is precluded from the possibility of accomplishment under any power which is proposed by either of these committees. I stated in my introductory remarks that the assumption, by which it is proposed to exclude the Chemung canal from the benefit of the improvements in which it is proposed that several of the canals of the State should share, was founded in misrepresentation, in falsehood and in fraud. I use the term fraud because I cannot conceive how it is possible that an array of figures should be made, such as has been presented in our Manual, for the purpose of showing that the Chemung canal was an incumbrance upon the canals and upon the finances of the State, unless it had some design beyond an honest showing of the merits of that canal. So far from its being true that this is a debtor canal to the State, that it is an unprofitable canal to the State; it is, on the other hand a creditor canal—it is a profitable canal and I will show the fact by the very figures which have been furnished in these tables, notwithstanding the fact that the auditor has undertaken to say that it has cost the State \$1,700,000 and upward, over and above any sum which it has ever contributed to the revenues of the State, and notwithstanding the assertion of the gentleman from Onondaga [Mr. Comstock], who addressed the committee a few moments since that the balance against the canal was the round sum of \$2,000,000. We find upon page 431 of the Manual a table showing the gross income of the Chemung canal from tolls directly paid for tonnage upon it and for tolls contributed to the Erie canal. But I ask the attention of the committee to the fact that while it shows this, it does not show the tolls which it has contributed to the Cayuga and Seneca canal. If you will look for a moment at pages 130 and 131 of the Manual, it will be seen that the statement contained there bears me out in this assertion. For it appears taking the statement of business for the year 1847, and comparing the tolls and tonnage of the Cayuga and Seneca canal with that of the Chemung canal, that while the Chemung canal paid only \$12,116.13 on 189,165 tons, and that, too, upon thirty-nine miles of canal, the Cayuga and Seneca canal paid more than double that sum, or \$25,382.27, on 58,204 tons, or less than one-third of the tonnage of the Chemung upon only twenty-one miles of canal, and the same ratio is continued, as will be seen by an examination of the tolls and tonnage of those canals, during the past twenty years up to the present time. These tables show, in the first place, that the income of the Chemung canal, since its first construction, including the contributions of the Erie canal from the tonnage received from it was \$2,012,575.56. They also show that the Chemung canal contributed to the tolls of the Cayuga and Seneca—and for which that canal has exclusive credit—the sum of \$461,794.45. It may be asked

how this fact is ascertained. If you take the whole tonnage of the Chemung canal, of the Cayuga and Seneca canal, and of the Crooked Lake canal, which is also a tributary to the Cayuga and Seneca, you will find that the tonnage of the Chemung canal is 62 per cent of the whole; and if the tonnage be 62 per cent of the whole, then the tolls which ought to be credited to the Chemung canal will bear the same proportion to those of the Cayuga and Seneca, and that proportion gives the sum which I have named, \$461,794.45. But there is another item in this account which is not included in any of these credits. I learn, from inquiry at the auditor's office, that accurate information on this point cannot be furnished. But this I have ascertained, that the relative proportion of tonnage delivered on the Chemung canal, from the other canals of the State, taking short periods of two or three years at a time, at considerable intervals, is about one-tenth of the tonnage which has been taken from the Chemung to the other canals of the State; and if one-tenth, then it should have credit for one-tenth the amount of the tolls derived from this tonnage upon the other canals and upon the Chemung canal itself. But I ascertain another fact, that, while the tonnage proceeding from the Chemung canal is principally lumber and coal, or other heavy articles, upon which have always been imposed light tolls, the articles which are brought from the other canals and delivered upon the Chemung are articles that bear heavy tolls, such as flour, merchandise, iron, nails, hides, and the various articles which are brought from the eastern markets and the western markets, Buffalo and Oswego, for consumption in the section of the country penetrated by this canal. These articles bear an average of more than twice the amount of toll which articles proceeding from that canal are subject to. And upon this assumption I find that the Chemung canal has contributed to the revenue of the State the sum of \$494,872.02, making a total to the credit of this canal of \$2,979,241.97. The entire cost of maintaining this canal, is \$1,139,770.30, leaving to the credit of the canal over and above the expense of its maintenance, the sum of \$1,839,471.67. Now, if you look at this page, 131 of the Manual, you will see this little note: "This canal has not paid the cost of superintendence, collection and repairs, the last twenty years, into \$977,466.97. It never contributed a dollar toward the payment of the principal and interest on the cost of its construction; and since 1846 there has been paid from the sinking fund, \$883,161.14 on the principal and interest of the debt contracted for the construction of the canal." Now, that may be true, so far as regards the tolls which have been paid on the simple length of that canal for tonnage upon it; but it is not true so far as regards the revenues which it has really contributed to swell the canal revenues of the State. And when the auditor made up these tables he did not regard it in that light; for he has given that canal credit for the tolls which it has contributed to the Erie canal. But why he omitted to give it credit also for the tolls which it has contributed to the Cayuga and Seneca

canal I would be glad to know. Upon page 431 of the Manual it will be seen that there is a computation of interest upon the entire cost of this canal at the rate of 7 per cent, and it amounts to the sum of \$1,635,704.70. You may deduct this from the sum left to the credit of this canal by the calculation that I have made, and it will still leave to the credit of the canal, to be applied upon the cost of its construction, the sum of \$194,066.97; and that with interest at the rate of 7 per cent, while it is true, as a matter of fact that, at almost all times, the State of New York can borrow money at the rate of 5 per cent, and that the money for the original construction of the Chemung canal was borrowed at that rate; and not only borrowed at that rate, but premiums were realized upon the loans made for its construction amounting to some \$41,000. This I believe to be the fact in regard to the rate of interest, and in regard to the premiums. If I am not right any gentleman acquainted with the facts can correct me. If we make this computation of interest at the rate of five per cent, at which the State has hitherto as a general thing borrowed the principal part of its moneys, this will leave a still better showing in favor of the Chemung canal; for the interest at that rate would be \$1,167,360.50, leaving a balance sufficient to pay not only the original cost of construction of the Chemung canal, but the cost of its reconstruction—that is, the rebuilding of its locks when they were first worn out, amounting to \$661,411.17. There is another fact in this connection worthy of attention—that while the Chemung canal constitutes only one-twenty-third part in length of all the canals in the State, it furnishes, according to the tables that are given in our Manual, one-seventeenth part of the tonnage of all the canals of State, and if its tonnage bore as heavy tolls as that of the other canals, the relative proportion of tolls would be equally great. I shall be asked, doubtless, what it is proposed to do for the improvement of the Chemung canal. I am told that there are a great many locks upon it, and that it will be expensive to put it upon the same footing with the Cayuga and Seneca canal. This argument, in part, at least, might have been used in regard to the Cayuga and Seneca. And why, when the original enlargement of these canals was authorized, the Cayuga and Seneca canal was included, and the Chemung canal left of its original size, I am entirely unable to say. It was before I became a resident of this State and, therefore, I am entirely unacquainted with the reasons which dictated that policy. I submit, in this connection, a comparison of this policy with a plan which should recommend the enlargement of the Champlain canal two-thirds of its length, taking its southern portion—leaving the northern part of its original size so that boats of an enlarged size could navigate two-thirds of its length, leaving the other portion of a few miles accessible only to small boats—or by which the Oswego canal should be treated in the same way—enlarging the southern portion of it to the size of the Erie canal and leaving the northern portion, in the neighborhood of Oswego, from

whence it derives the whole of its tonnage, at its original small capacity—or a plan to enlarge the Erie canal from Albany to Montezuma or to Rochester and leave the western portion (that portion upon which the city of Buffalo is situated and from which it is claimed that it receives the great bulk of its traffic, to be navigated by the small boats alone and compel the forwarders of Buffalo to carry their corn and produce in small boats to Rochester or Montezuma, or some other point, and there transfer it to larger boats for cheaper and better transportation to tide-water. From what I have said may be inferred the policy which it seems to me the State ought to adopt, whenever new improvements are to be made in regard to this canal. Every dictate of wisdom, every lesson of economy, every principle of sound policy which requires the improvement of any of the canals of this State, demands an improvement by which the Chemung shall be increased to the same size with the Cayuga and Seneca, whatever that size may be, whether the Cayuga and Seneca shall be again enlarged to admit its boats of 500 or 600 tons, or whether that canal shall remain as it now is. I ask gentlemen not to forget while they are talking about the golden harvests of the great West and its ever overflowing and its ever increasing granaries—while they point still beyond to the Rocky mountains and to the Pacific shore—and while in imagination they are carried across the broad Pacific to the populous fields of China and Japan for the purpose of bringing traffic here for transport through this great Erie canal—I ask those gentlemen not to forget that there is a little tract of land closer by, and that this, too, may be made to yield its treasures in no stinted degree for the growth and prosperity of the State. On our southern boundary lies an extent of country, the bowels of whose mountains are filled with treasures more exhaustless than those which fill the mountains of the Pacific coast, and of an increasing value with their increased development. These treasures are the agencies to put in motion, multiply and perfect the thousand varied industries which yield their fruits for the comfort, convenience, necessity and luxury of man. They are the means by which the elements are made subservient to our use, putting in motion the countless machines with their multiplied devices and contrivances, by which, aided only by the watchful eye and guiding touch, we give whatever of value there is in the products of the mine, the forest, or the cultivated field, and create that wealth which is the great object of human struggles and human hopes. So think our neighbors on the East, where every stream, from the time it leaves its mountain spring till it mingles with the ocean, works as it flows; and where, if no stream be at hand, other elements of nature are called into service for the same end. The coal and iron of Pennsylvania are the means by which the State of New York may produce the like, yet greater results. But this can only be when our canals and our railroads, improved and furnished with the highest facilities for cheap and convenient transit, shall be pushed to her boundary. For thus only can we rival, in cheapness and perfection, the skill, enterprise and experience

which direct the industry of other States and other lands.

Mr. VAN CAMPEN—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Van Campen, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the Chair in Convention.

Mr. SMITH, from the Committee of the Whole, reported that the committee had had under consideration the reports of the Committee on the Finances of the State and of the Committee on Canals, had made some progress therein, but not having gone through therewith had instructed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. PROSSER moved that the Convention do now adjourn.

The question was put on the motion of Mr. Prosser, and it was declared carried.

So the Convention adjourned.

WEDNESDAY, September 11, 1867.

The Convention met at 9 A. M.

Prayer was offered by Rev. R. ADELBURG.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. FOLGER presented two remonstrances against abolishing the Regents of the University.

Which were referred to the Committee of the Whole.

Mr. HARRIS presented two petitions signed by citizens of Albany, praying that the Board of Regents may be abolished.

Which were referred to the Committee of the Whole.

Mr. BALLARD presented the remonstrances of the trustees and faculty of Cortland academy at Homer against abolishing the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. KERNAN presented the remonstrance of the officers of the Whitestown seminary and others on the same subject.

Which took the same reference.

Mr. MILLER presented the remonstrance of the trustees and teachers of Delaware academy on the same subject.

Which took the same reference.

Mr. REYNOLDS presented a communication from Hon. H. G. Warner, on the subject of minority representation.

Which was referred to the Committee of the Whole.

Mr. WAKEMAN presented the remonstrance of the trustees of the Cary collegiate seminary, located in the county of Genesee, against the abolition of the Regents of the University.

Which was referred to the Committee of the Whole.

Mr. HOUSTON presented the petition of John Forsyth and others, of Newburgh, in favor of the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. GREKLEY presented the petition of R. McCann and others in favor of the prohibition of the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. COCHRAN—I ask leave of absence for my colleague, Mr. Morris, until Friday. He has been called away on important private business.

There being no objection, leave was granted.

Mr. BALLARD—I ask leave of absence for one week, on account of business.

There being no objection, leave was granted.

Mr. GOODRICH, from the Committee on the Judiciary, submitted a minority report, as follows:

The undersigned, unable to agree in all the conclusions of the majority of his associates, asks leave to present the following article, as a minority report. In doing so, he trusts he may be allowed to state that he has been unable to agree to the tenure of office for the judges of the leading courts of the State, proposed by the majority of the committee, because, as he conceived, such a tenure would interpose, so far as relates to those judges, a practical denial of the benefits of the elective system which it in form adopts for their selection. The great advantage of that system must ever depend on short terms of office, thus affording the people, not only the right to choose in the first instance, but a ready and effectual means of relief in case their selection of an officer proves an unfortunate one. He concedes that the services which judges are chosen to perform, furnishes an argument for a more extended term for them than can be necessary for an executive or a legislative officer, but he can by no means admit that it should be so far extended, as to place them absolutely beyond all power of control or dismissal, except through the cumbersome and uncertain machinery of an impeachment. For all the purposes of relief against an unfortunate selection, or protection against the more ordinary forms of official misconduct on the part of officers in any of the departments of government, an election for life, or for the term recommended by the majority of the committee, would be little more than an election in name; its substance and utility would be wanting.

The undersigned dissents, also, from the further recommendation of the majority of the committee, that provisions be made for submitting the question to the people, in 1870, whether the judges of the courts referred to, shall not thereafter be selected by appointment by the Governor and Senate, and not by election by the people. Such provisions, certainly, cannot be adopted, except from the conviction that an elective judiciary, which has been in use for twenty years in the State, and which, from the example of its adoption here, has been adopted and is now in operation in full two-thirds of the other States, has proved a failure. For himself, he is not prepared to make the admission. On the contrary, he believes that the results which have, here and elsewhere, attended its adoption, have established fully its practicability and success. He is also convinced that the people of this State could be induced, under no circumstances, to surrender it.

But it has not been from a desire, merely, to thus state the grounds of his dissent from these

conclusions of the majority of the committee, that the undersigned has been induced to prepare the article which he now has the honor to present. His principal aim has been to furnish, if possible, a plan of organization for the general terms of the supreme court, under which the decisions of that court would command more largely the confidence of suitors, and thereby to diminish the great number of appeals which have heretofore overwhelmed with business the court of appeals, and which, especially with the additional supply of cases hereafter to come from the new court of claims to be established, must continue to overwhelm it in the future. If, by this means, a remedy can possibly be reached, for that over-supply of business in that court (the great defect in the judiciary of the State), he believes it must prove far more satisfactory than any which can be obtained through future temporary commissions.

In the plan of organization which he presents, he has therefore endeavored to remove the three principal objectionable features in the present organization of the supreme court, which have operated to bring into disparagement its decisions, and to send so many suitors to the court of last resort for relief.

1. By the greatest practical reduction of the number of its general terms.

2. By providing judges (in sufficient number to command the fullest confidence) for holding the general terms, none of whom shall have previously passed upon any of the cases they review.

3. By relieving the general terms from their present character of mere local courts, and elevating them to State courts, held by judges representing the entire State.

ARTICLE VI.

SEC. 1. The Assembly shall have the power of impeachment, by the vote of a majority of all the members elected. The court for the trial of impeachments shall be composed of the President of the Senate, the Senators, or the major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment of the Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until he shall have been acquitted. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the laws of this State; but the party impeached shall be liable to indictment and punishment according to law.

§ 2. There shall be a court of appellate jurisdiction, called the court of appeals, composed of seven judges, who shall be elected by the electors of the State, and hold their office for fourteen years. The judges first elected shall be so classified that one shall go out of office and his place be filled by a new election at the end of every second year.

§ 3. Any five of the said judges shall form a quorum, and the concurrence of four shall be necessary to a decision. They shall, from time to time and as often as necessary, designate one of their number as chief justice. They shall also have the appointment, with the power of removal, of the reporter of the court, and of such attendants, other than clerk, as may be authorized by law.

§ 4. Upon the organization of the said court, the causes then pending in the present court of appeals, shall become vested in the court of appeals hereby created. Such of said causes as are pending on the first day of January, one thousand eight hundred and sixty-eight, shall be heard and determined by a commission to consist of five commissioners of appeals. But the court of appeals hereby created, for cause shown, may order any cause thus pending before the said commissioners, to be heard in the court of appeals hereby created. Such commission shall consist of the judges of the present court of appeals elected thereto, and a fifth commissioner, who shall be appointed by the Governor, by and with the advice and consent of the Senate.

§ 5. If any vacancy shall occur in the office of said commissioners, it shall be filled by appointment by the Governor, by and with the advice and consent of the Senate; and if the Senate be not in session, by the Governor; but in such case the term of office shall expire at the end of the session of the Senate next after such appointment. The said commissioners shall appoint from their number a chief commissioner, and may appoint and remove such attendants as may be provided for by law; and may in like manner fill all vacancies in such appointments. The reporter of the court of appeals shall be the reporter of said commissioners. And the decisions of the said commissioners shall be certified to and be entered and enforced as the judgments of the court of appeals. The said commission shall continue for three years, unless the causes committed to it are sooner determined. If at the end of three years from the time of entering upon its duties, all the causes assigned to such commission shall not have been heard and determined, those remaining undetermined shall be heard and determined by the court of appeals hereby created.

§ 6. There shall be a supreme court, having general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as may be prescribed by law. The State shall be divided into three judicial departments, to be composed of the judicial districts now existing: the first and second districts to compose the first department; the third, fourth and fifth the second department; and the sixth, seventh and eighth the third department. There shall be in each department twelve justices of the supreme court, or such other number as may hereafter be provided for by law, who shall be elected by the electors therein, and an equal number of whom, in each department, as near as may be, shall reside in each of the judicial districts thereof. The justices first elected shall be so classified that two in each department shall go out of office every second year, and those thereafter elected shall hold their office for twelve years.

§ 7. Alterations in the judicial districts or departments which do not change the number of either, may be made by the Legislature at the first session after the return of every enumeration under this Constitution. In the alteration of districts, county lines, and in the alteration of departments, district lines, shall not be broken. The Legislature may likewise provide for an additional justice of the supreme court, or they may provide for diminishing the number of the justices of that court, in any of the departments; but no such diminution, and no alterations made in districts or departments, shall have the effect to remove a judge from office before the expiration of the term for which he shall have been elected.

§ 8. The said justices in each department shall from time to time, and as often as necessary, designate one of their number as presiding justice. The presiding justices shall not act as trial-judges, nor hold special terms, nor grant orders reviewable in the supreme court; but they shall severally preside at the general terms in their respective departments. They shall likewise have the appointment, with the power of removal, of the reporter of the supreme court.

§ 9. To each department, for the purpose of holding the general terms of the supreme court therein, there shall be assigned, from time to time, five of the said justices; one, who shall be the presiding justice of the department, and two from each of the other departments; any four of whom shall form a quorum. The assignments shall be so made that, of the five justices so assigned to each department, two of the four from the other departments shall retire at the end of every second year, and others be assigned to fill their places; and in making such assignments regard shall be had to equalizing the time of service in the general terms among the several justices (other than the presiding justices), as far as may be found consistent with the due and proper administration of justice in the supreme court.

§ 10. Any one of the said justices, not assigned to service in the general terms, for the time being, may hold special terms of the supreme court and circuit courts, and any one of them may preside in the courts of oyer and terminer in any county.

§ 11. General terms of the supreme court shall continue to be held in each of the judicial districts, for the review of judgments and decisions in the cases and proceedings tried or arising within such district.

§ 12. The classification of the judges of the court of appeals and justices of the supreme court first elected; the assignment of the justices of the supreme court to service in the general terms; the times and places for holding the terms of the court of appeals, and the general terms and special terms of the supreme court within the several districts, and the circuit courts and courts of oyer and terminer in the several counties, and the appointment of the justices to hold such special terms and circuit courts, and to preside in such courts of oyer and terminer, shall be provided for by law.

§ 13. The testimony in equity cases shall be taken in like manner as in cases at law. And the Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and equity as they have heretofore possessed.

§ 14. No judge of the court of appeals, or justice of the supreme court, shall sit in review of his own decision.

§ 15. The judges of the court of appeals, and the justices of the supreme court, shall severally receive, at stated times, for their services, a compensation to be established by law, which shall not be increased or diminished during their continuance in office. They shall not hold any office or public trust. All votes for either of them, for any elective office, except that of judge of the court of appeals, or justice of the supreme court given by the Legislature, or the people, shall be void. They shall not exercise any power of appointment to public office, except as herein specially provided.

§ 16. The judges of the court of appeals shall be elected by the electors of the State, and the justices of the supreme court by the electors of the several judicial departments, at such times as may be prescribed by law. All vacancies in the office of either, before the expiration of their regular terms, may be filled by appointment by the Governor until the next general election, when every such vacancy shall be filled by election for the residue of the unexpired term.

§ 17. Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to the Assembly, and a majority of all the members elected to the Senate, concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace and judges and justices of inferior courts not of record, may be removed by the Senate by the recommendation of the Governor; but no removal shall be made by virtue of this section unless the cause thereof be entered on the journals, or unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the journals.

§ 18. There shall be in and for the city and county of New York, a superior court and a court of common pleas, with each five judges, who shall be elected by the electors of the said city and county; and there shall be in and for the city of Buffalo, a superior court, with three judges, who shall be elected by the electors of said city. The jurisdiction of the said courts, and the terms of session of the judges thereof, and their terms of office shall be prescribed by law. The said judges shall severally receive at stated times, for their services, a compensation, which shall not be increased or diminished during their continuance in office. Vacancies in the office of any of them before the expiration of their regular terms may be filled in the same manner as vacancies in the office of justice of the supreme court, as hereinbefore provided.

§ 19. There shall be elected in each of the counties in this State, except the city and county

of New York, one county judge, who shall hold his office for four years. He shall hold the county court, and perform the duties of the office of surrogate. The county court shall have such original and appellate jurisdiction as the Legislature may prescribe. The county judge, with two justices of the peace to be designated according to law, may hold courts of sessions, with such criminal jurisdiction as the Legislature shall prescribe, and perform such other duties as may be required by law. The county judge shall receive an annual salary, to be fixed by the board of supervisors, which shall be neither increased or diminished during his continuance of office. The justices of the peace, for services in courts of sessions, shall be paid a per diem allowance out of the county treasury. In counties having a population exceeding forty thousand, the Legislature may provide for the election of a separate officer to perform the duties of the office of surrogate. The Legislature may confer equity jurisdiction in special cases upon the county judge. Inferior local courts, of civil and criminal jurisdiction may be established by the Legislature in cities; and such courts, except for the cities of New York, Brooklyn and Buffalo, shall have a uniform organization and jurisdiction in such cities.

§ 20. The electors of the several towns shall, at their annual town meeting, and in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy, occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace, and judges and justices of inferior courts, not of record, and their clerks, may be removed after due notice, and an opportunity of being heard in their defense, by such county, city or State courts, as may be prescribed by law, for causes to be assigned in the order of removal.

§ 21. All judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected or appointed at such times, and in such manner, as the Legislature may direct, except as herein otherwise provided.

§ 22. Clerks of the several counties of this State shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. A clerk of the court of appeals to be *ex officio* clerk of the supreme court, and to keep his office at the seat of government, shall be chosen by the electors of the State. He shall hold his office for three years, and his compensation shall be fixed by law and paid out of the public treasury.

§ 23. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office; nor shall any judicial officer in the State, except a county judge or surrogate, or special county judge or surrogate, or justice of the peace or police justice, nor shall any judicial officer in the city of New York, or in the city of Brooklyn, practice as an attorney or counselor-at-law in any court of record in this State, or act as a referee.

§ 24. The Legislature may authorize the judgments, decrees and decisions of any local inferior court of record of original civil jurisdiction, established in a city, to be removed for review directly into the court of appeals.

§ 25. The Legislature shall provide for the speedy publication of all statute laws, and of the decisions of the court of appeals and of the general term of the supreme court, and such other judicial decisions as it shall deem expedient. All laws and judicial decisions shall be free for publication by any person.

§ 26. The first election of the judges of the court of appeals, of justices of the supreme court, of the superior court and court of common pleas of the city and county of New York, and of the superior court for the city of Buffalo, hereby created, shall take place at such time as the Legislature shall prescribe, between the first Tuesday of April and the first Tuesday of June, one thousand eight hundred and sixty-eight. The said courts and the commissioners of appeals shall respectively enter upon their duties on the first Monday of July next thereafter.

§ 27. County judges, surrogates, justices of the peace and coroners, elected or in office when this Constitution shall take effect, shall hold their respective offices until the expiration of the terms for which they were respectively elected.

§ 28. All courts and tribunals now existing shall be continued until the suits and proceedings pending therein shall be transferred and vested in the appropriate courts and tribunals hereby created; and the Legislature, at the first session after the adoption of this Constitution, shall make all necessary provisions relating thereto, and provide for organizing the courts hereby created.

These results, his aim has been to accomplish, and still, as far as practicable, to retain the local conveniences of the present organization; and furthermore, still to require the several judges of the court to alternate, from service in the trial of causes, to service *in banc*. This latter point, he thinks, he has the universal concurrence of the bench in deeming essential.

As his plan will be found to differ in some other particulars from that submitted by the majority (although many of the sections are but copies, either from theirs or from provisions of the existing Constitution), he presents an entire article, in order that the relation of its parts may be more readily be seen.

The undersigned may not too confidently believe that he has succeeded in what he has undertaken; but his plan, such as it is, he submits to the consideration of the Convention.

M. GOODRICH,
Minority Judiciary Committee.

Which was referred to the Committee of the Whole, and ordered to be printed.

Mr. ARCHER offered the following resolution.

The SECRETARY proceeded to read the resolution:

WHEREAS, It appears by authoritative testimony on the files of the Convention, that a corrupt combination was entered into in December last, by the bidders for certain contracts for the repairs of the State canals, whereby such contracts

were given to the highest bidders instead of the lowest, as the law contemplates, thereby involving the State in unwarrantable and wasteful expenditure; therefore,

Resolved, That the Attorney-General be requested to immediately commence legal proceedings to vacate such contracts for fraud, and to take such proceedings in relation to officials of the State, if any, implicated, as shall vindicate the honor of the State and protect its interests in the future.

Mr. ARCHER—If no gentleman wishes to debate that resolution particularly, I call the previous question upon it.

Mr. HATCH—I have not examined this resolution very particularly. I wish to inquire whether it embraces all the contracts on the canals for repair.

Mr. ARCHER—It embraces only those let on the 28th of December last.

Mr. SCHOONMAKER—I object to it.

The resolution was laid over under the rule.

Mr. McDONALD—I offer the following resolution:

The SECRETARY proceeded to read the resolution:

Resolved, That debate in Committee of the Whole on the report of the Finance Committee and so much of the report of the Committee on Canals as relates to finances shall be closed with this evening's session. That the Committee of the Whole shall report to the Convention at the end of this evening's session, on the finance report, and so much of the report of the Committee on Canals as relates to finances, and such report shall be made and continue the special order in Convention immediately after report of the standing committees to-morrow morning. No member shall occupy more than ten minutes on any one question or amendment in Convention, except the chairmen of the Committees on Finance and Canals.

Mr. McDONALD—This resolution relates to the order of the day as I understand it. I wish simply to state the object of it.

Mr. WEED—I rise to a point of order.

The PRESIDENT—The resolution relating to the business of the day is in order.

Mr. WEED—It relates to more than the order of the day, because it seeks to control the business for the next week; therefore, I think it comes within the rule that such resolutions should be laid over.

The PRESIDENT—The gentleman from Clinton [Mr. Weed], or any other gentleman can call for a division of the question if he chooses.

Mr. WEED—If I call for a division of the question will the portion limiting the debate in the Convention go over under the rule.

The PRESIDENT—That part which relates to the business of this day will not go over under the rule. Does the gentleman call for a division of the question?

Mr. WEED—I do.

Mr. McDONALD—When the question comes up as to whether it can be passed as a whole or not, it will be time enough to say something about that. That part which closes the debate on the question of finances, which has been discussed here, at the end of this day's session, I think desir-

able; I also think it desirable that a limit of ten minutes shall be put upon the discussion hereafter in the Convention, and if the President shall rule that that part of the resolution does not relate to the business of to-day, and can be separated from the other and not considered to-day—

The PRESIDENT—The Chair has made no such ruling as that.

Mr. McDONALD—If that ruling should be made I shall ask that that part of the resolution limiting debate to ten minutes shall be still on the table to be called up to-morrow. With these suggestions I move the previous question on the resolution.

The question was put upon ordering the previous question, and it was declared carried.

Mr. HUTCHINS—I ask for information, whether the effect of that resolution is not to stop debate on the entire report of the Committee on Finance.

The PRESIDENT—The Chair must leave that to the decision of the Convention.

Mr. KINNEY—I would like to make an inquiry with reference to that. It proposes simply to limit debate at that time. Is it intended to stop the action of the Committee of the Whole and report to the Convention?

The PRESIDENT—The gentleman must gather the meaning from the reading and not from the construction of the Chair.

The question was put on the resolution of Mr. McDonald, and it was declared lost, on a division of a vote of 28 to 53.

Mr. SHERMAN—I offer the following resolution and move the previous question on it.

The SECRETARY read the resolution, as follows:

Resolved, That general debate in Committee of the Whole on the finance and canal reports cease after the evening session of to-day, and that debate on these subjects be limited thereafter to periods of twenty minutes on amendments, both in Committee of the Whole and in Convention.

Mr. WEED—I call for a division of the question, and the first proposition will be exactly as it was voted down. For that reason it is not in order.

Mr. TAPPEN—I move that it lie on the table.

Mr. SHERMAN—I rise to a point of order, that the resolution is not divisible. If the first part is rejected the resolution will be of no effect.

Mr. VERPLANCK—I rise to another point of order, whether the gentleman can indirectly reverse the action of this Convention upon the first proposition.

The PRESIDENT—The Chair understands this to be a different subject-matter. The propositions are not at all identical.

Mr. LAPHAM—There is a pending motion to lay the resolution on the table.

The PRESIDENT—The previous question takes the precedence under the rule of the Convention.

The question was put upon ordering the previous question and it was declared carried, on a division, by a vote of 45 to 43.

Mr. WEED called for the ayes and noes on the resolution.

A sufficient number seconding the call the ayes and noes were ordered.

Mr. BELL—I would like to inquire of the mover of that resolution if he intends to embrace the article on the care and management of the canals.

Mr. SHERMAN—I would state for the information of the gentleman from Jefferson [Mr. Bell] that both subjects are embraced in the resolution.

The question was put on the resolution of Mr. Sherman, and it was declared adopted by the following vote:

Ayes—Messrs. A. F. Allen, Andrews, Archer, Armstrong, Beadle, Bell, Bergen, Bickford, Bowen, E. A. Brown, Cassidy, Church, Clarke, Cochran, Comstock, Cooke, Corbett, T. W. Dwight, Flagler, Folger, Fuller, Garvin, Graves, Greeley, Gross, Hadley, Hand, Hitchcock, Houston, Kernan, Kinney, Krum, Larremore, A. Lawrence, M. H. Lawrence, Lee, Loew, Ludington, McDonald, Merrill, Merritt, Merwin, Miller, Opdyke, A. J. Parker, President, Roy, Seaver, Sherman, Smith, Stratton, Strong, Van Cott, Wakeman, Wales, Williams—56.

Noes—Messrs. N. M. Allen, Alvord, Axtell, Barnard, Barto, Beals, E. Brooks, Burrill, Curtis, C. C. Dwight, Ely, Field, Fowler, Grant, Hammond, Hardenburgh, Harris, Hatch, Hitchman, Hutchins, Ketcham, Lapham, A. R. Lawrence, Livingston, Lowrey, Matice, Monell, More, C. E. Parker, Potter, Prosser, Reynolds, Rumsey, Scheil, Schoonmaker, Seymour, Spencer, Tappen, Tilden, S. Townsend, Van Campen Verplanck, Weed, Wickham—44.

Mr. GRAVES—It is known to this Convention that a large number of memorials from different parts of the State have been presented to this Convention, asking that a provision be incorporated in the Constitution for submission to the people, of the question of total abstinence and prohibition against the sale of intoxicating liquors. And there has also been presented a large number of memorials from the city of New York, against prohibition. It will be remembered that, through the courtesy of this Convention, the friends of total abstinence had a hearing in this hall some time ago. Those opposed to prohibition desire now to have a hearing, and ask that it may be had in the interim on Friday of this week, while the Convention has its recess, from two o'clock in the afternoon until seven o'clock in the evening, and the committee have delayed reporting on this subject in order that those opposed to prohibition might have a hearing. I, therefore, present this resolution.

The SECRETARY then proceeded to read the resolution as follows:

Resolved, That the use of this hall be granted to the liquor dealers association of the city of New York, to appear before the Committee on the Adulteration and Sale of Intoxicating Liquors, at four o'clock P. M., on Friday next, the 13th instant.

The question was put on the resolution of Mr. Graves, and was declared adopted.

Mr. KETCHAM offered the following resolution:

Resolved, That one thousand copies of the report of the Canal Investigation Committee of the Legislature, be printed for distribution by the members of this Convention.

Which was referred to the Committee on Printing.

The Convention then resolved itself into Committee of the Whole on the reports of the Committees on Finance and on Canals, Mr. SHERMAN, of Oneida, in the chair.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Verplanck.

Mr. TILDEN.—Mr. Chairman, I owe an acknowledgment of the courtesy of the Convention by which I am allowed, by a resolution making a special exception to the rule now governing this Committee of the Whole, an additional half hour in which to lay before it such views as I have taken on the subject now pending, although the application for that indulgence was made without any previous consultation with me. Whether I shall be able to occupy the period allotted to me I do not know, because I speak to-day with considerable difficulty in consequence of a hoarseness which, for the first time in my life, somewhat troubles me in the customary use of my voice. Sir, I find since I have been here, by the language which has been addressed to me, that I am esteemed by some members of this Convention to be a "railroad man." What may be the import of that language as applied to me, I know not. It is true that, chiefly in a professional capacity, I have, during the last ten or fifteen years, been very extensively connected with the railroad enterprises of the country, and particularly of the West. Indeed, I might acknowledge that at some time during that period, a large portion, perhaps, more than half of all such enterprises situated between the Hudson and the Missouri and north of the Ohio have, on some occasion, stood to me in the relation of clientage. But those relations have been altogether too numerous and too diversified; they have too often called for advice on which to found action rather than to maintain controversy; they have too frequently existed at the same time with independent and even rival companies or involved the consideration or adjustment of conflicting interests, to have cultivated the spirit of partisanship of any particular enterprise or class of enterprises which seems to be implied in the designation applied to me, or to have existed at all if I had been supposed likely to be deflected from the results of my own judgment in the advice sought from me by any connection, relation, association or interest. Sir, I stand here to-day to speak for the people of the State of New York. In fulfilling the trust which my constituents have committed to me, I know no other duty, and am wholly incapable of being influenced by any interest of my own or of anybody else. So far as I have any interest at all, so far as I might be affected by relations of friendship or association, it would be chiefly with those railroads which are tributaries, not rivals, to the Erie canal. I have, therefore, no possible motive of prejudice against that work, no hostility to the interests it is designed to promote, but quite the contrary. I admit the general usefulness of a State to manage enterprises of this description, or indeed to manage any kind of business; but the Erie canal is a work *sui generis*, and, in some sort, so are the Oswego and the Champlain canals, for the same reasons. It connects great navigable

public waters of vast extent on the one side and on the other, and in some degree assumes itself the character of a *quasi*-public water. The voyage from Europe, since the discovery of the Gulf Stream, whether it be to New York, to Charleston or Savannah, strikes westwardly across the Atlantic ocean close to Newfoundland and then passes Southward in the counter current directly by the gates of New York. That capacious harbor is open at all seasons of the year, is easily accessible in all prevailing winds, is land-locked, safe and tranquil. From it you ascend the smooth waters of the Hudson, on which will ride the lightest hull with the largest cargo which the skill of man has ever been able to make traverse any waters. When you reach the head of navigation you have already passed the Blue Ridge and are in that great gateway of travel and traffic opened up in the geographical configuration of this continent, the only place where the Alleghenies are cloven down to their base, and travel and traffic are allowed to flow across them on a level—the natural pass of commerce, connecting the head waters, navigable, of the Hudson, by the narrowest isthmus, with the great lake system of the Northwest, and by the best grades (for there are grades in canals as well as grades in railroads) with all that great system of inland communication and interior commerce, in its character and extent and accessories, the most remarkable, perhaps, that exists in any part of the habitable globe. The railways—which are the creation of the last fifteen years, and now cover the valley of the Upper Mississippi as with a close network, and are largely tributary to the lake system—command that vast area of fertile soils, easily brought into cultivation by reason of the open prairies, admirably fitted to the use of agricultural machinery, and remarkably adapted to the cheap construction of railways, as, also, peculiarly dependent upon them; and now filled or being filled by an active, intelligent, energetic population, trained in all the arts and industries of a high civilization, and applying those arts and industries to these vast areas of rich soils, acquired by the settlers almost without price, and brought by the lake system and its easterly water connections, and the railway system, into immediate practical contact with the great centers of population, capital, commerce, and manufactures. Such a marvelous conjunction of all that civilization can attain, with all that nature in her prodigality can give, even amid the social barbarism of an almost unoccupied wilderness, certainly has never before been seen in any experience of mankind. I ventured, in 1854, on a speech at the opening of the Rock Island railroad, which first reached the Mississippi, as some twenty now do, to say that we would wrench the Father of Waters from its bed and make it pour its affluence of traffic into the harbor of New York. I ventured, in closing my speech on the questions relating to the canals, in the Convention of 1846, to say that we would make New York the carrier, the merchant, and the banker of the New World. Both of these predictions are now already fulfilled. Sir, it is these relations which I have thus rapidly sketched that, in my judgment, invest the Erie canal in some degree with the character of a public water. I am not one of

those who think that we are at this time justified, as a matter of practical business judgment, in acting on the assumption that the Erie canal is destined, at any period which we can now foresee, to be superseded as an important and valuable servant of the public in the transportation of heavy freights. It is true that nearly all the improvements of the present time tend in the direction of enlarging the capacity of railways; and no human wit can see precisely to what extent those improvements will go. That they will greatly advance, I have no manner of doubt. The railways have already nearly monopolized the carriage of valuable and of light merchandise. They have, for the time being, wrested almost wholly from the Erie canal, and largely from the lakes, the transportation of flour. They have nearly superseded many canals of inferior character or inferior situation, including many which were originally constructed as tributaries to the Erie or the lakes. They have the advantage of working in winter as well as in summer, and thereby saving the accumulation of raw materials in the fall and the accumulation of manufactured goods until spring; and they largely effect exchanges even of agricultural products which the producer or consumer is unwilling to delay for the opening of navigation. Wherever rapidity of transit, or certainty of delivery is the controlling motive; wherever there is a possibility of a quicker turn of capital at a profit, or a necessity of immediate conversion of property into money, they are preferred. Penetrating the whole country, touching every considerable place, going near to every producer and every consumer, they are a much more complete agency for the distribution and reception of produce than a water communication which touches only a few principal points; and wherever property must take the rail to reach the water, or leave the water to reach its destination by rail, or make both these changes, it is often found most convenient or cheapest to make the whole transit by rail. The achievements of the railways have been a succession of surprises to us all, and, so far, they have maintained all the advantages they have ever once acquired in their eager and daring competition with river and lake, which God has given to us without tax or toil. Such a result may well suggest to us a prudent caution. But let it not lead us into anticipations which are exaggerated or unapplicable to the particular case. We have to act upon the questions now before us in a practical sense; not on speculative or conjectural opinions of the future, but on the basis of ascertained experience. I think that to-day we are not justified in acting upon the assumption that such a mode of communication as now exists by means of the Erie canal, with its peculiar characteristics and in its peculiar situation, is to be superseded. I have alluded to the grades of the Erie canal. You have only to look upon a map such as the State Engineer attaches to his annual report, to see the Chenango, the Black River, and the Genesee Valley combining as by many successive steps over the routes by which they reach their interior termini, where they find, as they find in their courses to those termini, no sources of other than

merely local business—and then to look at the Erie canal, with its level grades, and its position between the great navigable waters of this continent, to see why it is that while the former have been generally unremunerative, the Erie has remained, as it probably will remain in the future, an instrument of great power and great value. In my judgment it is the policy of the State to preserve, protect and improve it, and not to contemplate in our present experience of such affairs, any probability of abandoning it. The State undertook this work for a public object. It did so simply because private enterprise, individual capital, could not at the time accomplish that object. It was, therefore, in consonance with the true theory of its former action, that the State, in 1851, allowed the transit of property upon the railway situated along the side of the canal. For the State to have undertaken this work because there was a controlling object in creating a facile and cheap transit demanded by the necessities of the million and not otherwise attainable, and then to have managed it in the narrow and jealous spirit of monopoly—for the State to use the sovereign power of legislation for the purpose of oppressing or destroying a new method of attaining the same object, so beneficent to the people, and all the better that it sprang from private enterprise, and could serve the public with more skill, would have been to forget the motive and purpose for which the State originally acted, and its duty and trust as a representative of the million, and to remember only its selfish interests in its character as a proprietor. I therefore concurred in the policy of this State in 1851, which, by repealing all restraints, whether by prohibition or discriminating taxes on the carriage of property by railway through the State, opened up to free competition every mode of transit for the products of the West and for the manufactures and merchandise of the East. I do not think there is any just ground for the jealousy which appears to be felt in some quarters toward the railway system of the country. It certainly has served the public with great efficiency and with incalculable utility. A new mode of intercommunication whereby the products of different soils and climates and different capacities of supplying human wants are more rapidly or cheaply interchanged, adds as much to the productiveness of human industry as increased geniality of the climate or increased fertility of the soil. The Convention of 1846, by provisions which it fell to my lot to report, provided, first, in favor of a system of incorporation under general laws; and, secondly, for a supervisory legislative control over the chartered powers and privileges of all corporate bodies. In my judgment, those two provisions were and are perfectly adequate to secure every public object, however freely we grant to private enterprise all the powers necessary to enable it to create these great machines of travel and transportation, and to the management of them by corporate bodies, which can serve the public with more skill and economy than the State can. The authority thus reserved to the State is doubtless capable of being perverted by it to private injury and oppression but it seemed to be necessary to the

the public safety, and is a trust to be exercised with wisdom and justice. Sir, experience has shown that the tendency, thus far of these railways has been, not to overcharge the public, but rather through excessive competition among themselves, to serve it more cheaply than they could afford. They do not now, taking the country together, reserve to their stockholders and for their bondholders, much, if any thing over twenty-five per cent of the cost of carriage to the public; while upon the canal, in the average of years, the State reserves fifty per cent. Their economies and their skill have been at the service of the public, and eminently successful in working out the grand results which are the objects of their creation. This brings me to allude, not in any particular order, because while I have endeavored for the last few weeks, during some failure of health, to study the question as to the canals with all the care I was able, I have not had time to arrange my ideas in any methodical manner, and perhaps shall not be able to present them artistically; but I design, during the time allotted me, to converse familiarly and freely with this body on the topics under consideration—this brings me to allude to the general policy of taxation of the right of transit. I was adverse to such a policy in 1846, according with Mr. Hoffman on that subject, as is indicated in some passages in the recorded debates; although the chief part I took in that discussion was not reported, for I had not the leisure or the temper to report it myself. I concurred entirely in the general view of the inexpediency of taxing the right of way. I asserted the doctrine that the canal ought to be considered as a trust from which the State should receive back simply what it had advanced for construction and maintenance, and that it should employ the surplus, if a surplus should arise, for the improvement of the canal, and for the cheapening of the service it renders to the people. I hold that doctrine now. I regard the condition of taxation to which we have in our time arrived, in respect to the railway system, as a very serious error, calculated to lead to very injurious results to the public.

Mr. HATCH—The gentleman has referred to Mr. Hoffman. I have here an extract from the debate in the Convention of 1846, which I desire to read, in which he says:

"Neither in form or substance do I accede to the doctrine, that the canal tolls shall be taken for general purposes. I deny it. The right of way is the right of the million. The sovereign holds it in trust and can exercise it only for their benefit, and has no right to make a revenue out of it. Such a course must engender the worst oppression and the worst corruptions, and soon realize the worst vices of the worst governments—taxation on all we consume, which will allow nothing to go to or from the markets without tribute to the State."

I desire to know if the gentleman concurs with those views.

Mr. TILDEN.—In those general views I concur now, as I did then. To-day the direct taxation upon the railways of the country, if I may judge from the cases which have come under my observation, is not less than about five per cent

of their gross earnings, and well toward twenty per cent of their net earnings, while the indirect taxation upon them is about three times that amount; and the people of this country ought to know that whenever they pay a dollar for transportation or for travel, not less than twenty or twenty-five cents of that dollar is—not the cost of the service they receive, but taxation unduly imposed on such subjects on our time. If one-half of the net earnings of the railways goes to their creditors—the bondholders—then not more than twelve and a half or fifteen per cent of the gross earnings are received by the proprietors of these great works—the stockholders. This includes all interest on the investment of the proprietary class, and all indemnity for the risks incident to their enterprises, and all compensation for a supervisory attention to their administration. It is a startling fact that, to a much larger extent than all which these useful servants of the public pay to their owners—they collect for the government, by direct and indirect taxation. You would truly describe their leading characteristic if you should say that, in respect to their results, they are chiefly agents of the government to levy taxes upon the people. That, while achieving such marvelous results as we witness in our day in enhancing the proceeds of human industry, in facilitating travel and commerce, in quickening the springs of social prosperity and individual happiness, these useful servants of the public exist more for the government than for their owners whose enterprise has created them. I cannot, however, but deem such a mode and degree of taxation as most mischievous. In condition of general low prices for agricultural productions, it would probably be impracticable to intend now, very briefly, because the subject has been already much discussed, to refer to the capacity of the Erie canal to bring down an aggregate tonnage. In this connection, I wish to call the attention of the Convention to this distinction: capacity to do an aggregate business within a given time depends upon the facility and rapidity of the locks in the passage of boats. Economy of transportation depends chiefly upon the condition and availability of the water-way of the canal. In the ordinary course of use of the canal the boat moves along through its water prism, if the work be well constructed, without any special cause of retardation; and there is no reason why the Erie canal, for instance, could not pass five or ten times the number of boats that has ever done, the prism being in good order except the difficulty of getting all those boats through the locks. It is, therefore, the power of lockage which is the test of its capacity to transmit a given number of tons in a day, a month, or during a navigation season. Now, in the Erie canal, with its present locks, how many boats, how many cargoes, what aggregate tonnage during a day, a month, a season of navigation, is it capable of passing? I have here—but shall not have time to refer to it—the original report in 1835, of the engineers, on which the enlargement was undertaken. Mr. J. B. Jervis, the father of the skillful and admirable engineering science which governed the plans of the enlarge-

ment and made it about the best work of the kind which exists—stated that the capacity of the Erie canal would be enlarged threefold, in one set of locks; that comparing single locks upon the old canal with single locks upon the enlarged canal, the capacity of the canal would be increased three-fold. (Ass. Doc No. 254, for 1835, page 17.) Mr. Ruggles, when he was canal commissioner in 1838—I have his report before me but shall not read from it—estimated that the enlargement would increase the capacity of the Erie canal to sevenfold that which then existed, and asserted that “it will furnish the means of convenient transit for not less than ten millions of tons annually!” (Ass. Doc. for 1838, No. 242, page 17.) Mr. Seymour, the State Engineer in 1851, when the nine million bill was passed in order to obtain an earlier completion of the enlargement, made an estimate which was very large, but it is so indistinct in its data, that I will not refer to it. Mr. McAlpine, in his celebrated report of 1853, and again in 1854, stated the capacity of the enlarged canal to be seven millions of tons per annum; at the same time stating the capacity of the original Erie canal to be a million and a half. Mr. Richmond, the late State Engineer, made an estimate which has already, I believe, been laid before you in the very able argument of my friend, the Chairman of the Committee on Finance (Mr. Church). He computed in 1861 that a lockage once in eight minutes or if the locks were doubled, once in sixteen minutes by each of the pair, would enable the Erie to deliver at tide-water 5,220,000 tons, or about double what it did last year. (See Ass. Doc. for 1862, No. 8, page 33; also No. 28 for 1861.) The Chairman also referred to the estimate of Mr. Goodsell, the present State Engineer; but I believe, some question arose as to the authenticity of that estimate, or Mr. Goodsell's responsibility for it. The estimate he (Mr. Church) referred to was appended to the report of the canal commissioner, Mr. Bruce, in 1866. In looking over the reports of the canal commissioners, which I did during my illness some weeks ago, I found an estimate under the authority of Mr. Goodsell, appended to the report of the canal commissioners in 1860. I have it here, but the time will not allow me to read it. Suffice it to say that it makes the capacity of the Erie canal, for an aggregate tonnage, up and down, at over 13,000,000 tons, provided the tonnage were equal both ways; that is, something like 9,266,000 tons of descending tonnage. It is founded on an allowance of seven and a half minutes for each lockage. It will be found on Assembly document No. 51 for 1860, page 20. Such, sir, were the representations under which the State acted in undertaking the enlargement in 1835, and all through its progress, for a quarter of a century, until 1860. They were concurred in by all the friends of the enlargement, at all times and on all occasions. And yet we are now told they are a total fallacy. We are now told that while we expended twenty-five or thirty years, and more than that number of millions of dollars to enlarge the Erie canal, mainly to increase its capacity, we have totally failed in that respect. That while we have increased the cargo of the boat to three

times its former size, it now takes three times as long to pass the increased cargo through a lock. That it does so necessarily and inevitably. That the whole net result is, that we can get no more tons through the locks in a day, in a month, or a navigation season, than we could in the old unenlarged canal. The fingers on the dial-plate of time are set back thirty years, and we are to begin anew just where we started in 1835. And then, on the basis of such an alleged failure, such an alleged blunder in all our previous calculations, we are to be rushed into a fresh enlargement for the purpose of increasing the capacity of the Erie canal. And we are to begin the new adventure by pulling down all our double locks—splendid and costly structures—and putting single locks of double the length in their places. Mr. Jervis, in the letter to which I have referred, denies, and I have no doubt with perfect truth, that the Erie canal enlargement has been such a melancholy failure. Sir, it becomes important to ascertain what ought to be the time consumed in the lockage of a boat. In the allotment of duties in 1846, between Mr. Hoffman and myself, it fell to me to make the investigations which related to the general capacity of the canal and the power of the locks to pass the boats. I furnished some of the tables on that subject, and also some of the tables which are now habitually continued in the annual reports of the auditor. I ranged rapidly through a fearful library of documents relating to the canals, to find whatever information they contained on these subjects. In the early days of the Erie canal it was supposed to take from twelve to fourteen minutes to pass a boat through a lock. When the enlargement was undertaken in 1835 the maximum power of the locks was supposed to be to pass a boat in about ten minutes. In 1841 the canal commissioners, Mr. Ruggles and others, estimated it to be to pass a boat in a little over seven minutes. This was when they were urging the speedy completion of the enlargement not only as a “measure of fiscal and commercial expediency, but of immediate and vital necessity.” They said that “there was a fixed and absolute quantity, to wit, 225,000 tons, which, if added to the descending tonnage—then 467,315 tons—would exhaust the remaining capacity of the canal,” and that “any further increase of the trade must seek another channel.” In 1842 the commissioners repeated this estimate, and said that experience had established its correctness. In 1843, after Mr. Flagg had resumed the administration of the finances, the locks at various points were watched and timed for the same consecutive twenty-four hours, and they were found to pass the boats in from four to six minutes each. This result was obtained partly by improvements in the valves of the lock-gates, which enabled the locks to be filled and emptied more rapidly, and partly by more efficient working of the locks, and neither of these expedients had been exhausted. Mr. Flagg found that the canal had been allowed gradually, by the deposit of wash from its sides, to fill up to the extent of at least a foot. In a celebrated report of the canal board, in 1840, supposed to be written by Mr. Spencer, I find it announced (and I have that report

here also) that the water in the Erie canal available for navigation was but three feet. In 1841, when the leading members of the canal board, with their eyes in the clouds, were entirely overlooking all those practical methods that would make the Erie canal efficient, they were compelled to enact a restriction that no boat should draw more than three feet of water. When Mr. Flagg came in he began by bottoming out the canal and throwing the wash which had accumulated there, upon the banks. He manned the locks efficiently, and during the most busy season of the year he double-manned them. The result was that during the year of the Convention, the Erie canal, with many of its locks unenlarged and single, did an aggregate tonnage of 1,107,270 tons, and in the following year, when the great foreign demand for breadstuffs consequent upon the famine in Ireland swelled its business, its tonnage reached to 1,431,250 tons, all done through locks such as at Frankfort and at Fort Plain—old single locks, built with the canal and unenlarged. Mr. Flagg, by that judicious expenditure of about \$300,000 and by these judicious methods, increased the capacity of the canal so as to enable it to accommodate an additional tonnage more than four times the increase which the canal commissioners in 1841 said would bring the business absolutely to a stand still by complete exhaustion of the capacity of the canal; and the business was better accommodated and the round trip of the boat quickened from twenty-two to eighteen days. Such a result excited much surprise; and in 1846, the allegation, almost in the language of complaint, was very rife, that Mr. Flagg had enlarged the Erie canal under the head of ordinary repairs, or it could not do the astonishing amount of business which passed over it. The Committee on Finance in that Convention, resolved to obtain thorough information on that subject. So during the session of the Convention, we had the canal sounded every four rods on both sides of the boat from Albany to Buffalo and the depth of water measured on the upper and lower miter-sill of every lock; and the capacity of the locks for passing boats tested by actual experiment at all the points where it was deemed necessary. Sworn returns were before the committee, and were accessible to any member of the Convention who chose to look at them. It turned out that the canal had attained only an honest four feet of water, and an efficient administration,—though its capacity had been enlarged from the 667,000 tons and the 225,000 additional which was to close its business and drive the trade to other channels, well toward a million and a half, with many locks yet single. In looking among the papers of the canal department at that time, I found manuscript records of the experiments made in 1843, of the time which it took to lock through a boat. And particularly my attention was called to these experiments at Alexander's lock, three miles above Schenectady, which, in the throat of the canal, passes all the tonnage that concentrates for tide-water. I observed that for half an hour at a time, that lock passed boats at the rate of three and a half minutes each. I asked Mr. Bissell, who was then one of the canal commissioners, to send down the superintendent of that lock,

which he was good enough to do, and it was ascertained that the lock had not yet been improved in the valves or paddle-gates through which the water is allowed to fill and to empty the locks. Originally these valves were one in each leaf of the lock-gate. There had been very little attention paid to that subject, but it is perfectly obvious that by putting in two you can diminish by one-half the time required to let the water in and let it out. The superintendent, at my request, put another valve in each of the leaves of the gate at one end of the lock, and reported a gain of twenty seconds. The other experiments proved that the locks would pass boats ordinarily in four to six minutes—with great diligence, rather in four than in six. I have taken from the auditor's report of 1847, which has been in my possession ever since, some statements on that subject. The lock at Fort Plain, an old single lock, on June 25, 1847, passed 304 boats. The same lock on June 14, 1848, passed 340 boats. The time taken was a little less than $4\frac{1}{2}$ minutes in the first instance, and a little less than $4\frac{1}{2}$ minutes in the second, during the entire twenty-four hours, and making no allowance for the intervals in which there were no boats ready. On June 26, 1847, the Frankfort lock, also an old single lock, passed 264 boats; and on May 13, 1848, the Frankfort lock passed 311 boats; in the latter case at the rate of one boat, every four and eight-tenths minutes, during the entire twenty-four hours without allowing anything for intervals between the arrivals of boats. In 1847 the Fort Plain lock passed, for a whole month, boats at the rate of 223 each day, and in 1848 the Frankfort lock, for a whole month, passed boats at the rate of 206 each day. In 1847 the daily average for the whole season at the Fort Plain lock was 209, and at the Frankfort lock 193.

Mr. HATCH—What was the tonnage of the boats?

Mr. TILDEN—An average of 67 tons in 1847; in 1848, 71 tons. I have the documents here, but do not propose to refer to them. These locks are stated in the official reports of both years to be old single locks.

A MEMBER—May I inquire what is the lift of the locks?

Mr. TILDEN—I do not remember at this moment. Sir, it is a matter of engineering skill and business experience to make the locks—by practical improvements in them, in their construction and machinery, in the convenience of their approaches, and above all by a good administration—and a proper police over the boats—efficient in doing their work; and thus to accomplish, almost without cost, as much as could be obtained by an expensive change in the essential plan of the canal, involving many uncertainties and hazards, and creating great inconvenience in the navigation during all the process of change. History repeats itself; and what the Erie canal now wants more than anything else, is a better water-way, by giving it the honest seven feet which the navigator is entitled to, instead of the six feet which the transporters say they have got and which your engineers admit is about all you give, and then making and keeping the locks a

perfect as you can, and the gates in good repair, to work your machine as efficiently as possible. It is an enlargement of the capacity of the men who administer the canal which is now wanted, and not an enlargement of the capacity of the canal. Now, as to the additional time that ought to be taken in passing the locks of the present enlarged canal, as compared with those of the former canal, I have a letter from Mr. Jervis, which I cannot read because it will consume so much of my time, but will submit to the Convention. I observe that he estimates that it ought to make about one-fourth more time on the enlarged canal to pass a boat than upon the old Erie canal. I observe that Mr. McAlpine, in his testimony before the Canal Committee, states that it would require a fourth or a third more time upon the "gunboat canal," as I will call it for convenience, to pass a lock than on the present enlarged canal. I presume that if the canal is in good order, it is capable, or ought to be made capable, of passing boats, not once in three minutes, but say once in five on the old canal, and on the present canal once in about seven minutes. If that cannot be done, the causes of the failure ought to be carefully investigated with a view to apply the proper remedy. I have passed through locks on Pennsylvania canals, timing them as I went—in three minutes—on the Delaware division, and on the Lehigh canal. It is or ought to be only a matter of detail, to secure what the engineers have all considered to be reasonable results, if the locks are well constructed and well administered. The paddle-gates being adapted to admit the water to the lock and to allow it to escape will operate as quickly for the large boat as for the small. There is simply a little time lost in handling, and particularly in starting the boat to go out of the lock when in a state of rest. It is simply that additional time for which you need to make allowance. At any rate, I am for a thorough investigation and a complete test by experience before I admit that all former calculations in this respect have been an illusion. I desire now to call the attention of the committee to a circumstance of some importance. The Erie canal in all its locks, except five—the lock at Port Byron, the lock at Jordan and three at Syracuse—locks downward toward tide-water. Eighty per cent of your tonnage in 1835 and generally since and at some times much more than that, is descending, and not more than twenty per cent, and sometimes not more than fifteen per cent, ascending tonnage. A boat comes down fully laden, drawing six feet of water, and returns drawing ordinarily not more than a foot or eighteen inches. The current is all down toward tide-water, except on those five locks, three of which are at Syracuse, all of which are between Montezuma and Lodi, a little east of Syracuse. The boat comes down with the current, and especially if the lower gates of the lock leak, it passes rapidly into the lock, even though it draws six feet of water; and the boat that returns floats along on the top of the water without inconvenience. Now, it so happens that in these five locks, vastly more inconvenience is found than anywhere else. Some inconvenience, no doubt,

is felt, but, in my opinion, it is greatly exaggerated. I have some statistics as to the lockages at Syracuse, but I do not intend to refer to them, particularly as that matter has been already discussed by a distinguished member from Onondaga [Mr. Andrews], though I was not so fortunate as to be present and hear that part of his speech. I do not think any very serious practical inconvenience has been, so far, experienced. Some inconvenience has been felt, undoubtedly. It was an error of the original engineering that those five locks were not made a few feet deeper, and perhaps somewhat wider than the other locks, for the purpose of enabling the water to pass out of the lock with ease, when displaced by the boat, as the loaded boat—loaded down to six feet draught—enters the lock. This is a mere local difficulty. Whenever the business of the Erie canal increases to a degree at which serious inconvenience shall be felt at these five locks, or any of them, several expedients which have been proposed may be resorted to. It has been proposed to make a second tow-path on the berme bank. Another suggestion of a good engineer is to place small stationary engines to haul the boat more conveniently and more rapidly into these locks. Those expedients would involve but very small expense. You might construct at these five locks another tier, making them if you please deeper and possibly a little wider, and use your present and these also, or you might alter these locks so as to remove whatsoever inconvenience may be felt whenever that inconvenience becomes sufficient to render such a measure necessary. It was one of those five locks which Mr. Prosser, took out his special sub-committee to see; but I do not find the important truth anywhere mentioned in the report of their examination that the same difficulty was not found anywhere else. No doubt the capacity of the canal is limited by the worst locks upon it, but it does not at all follow that the worst locks may not be improved, made a great deal better, or even very good if not equal to the best; and in that consists, in my judgment, the fallacy of the examination, and fallacy of the conclusions arrived at by the special sub-committee of the Canal Committee who went to visit and inspect those locks. The fallacy is that these five specimen bricks have no other bricks like them in the whole edifice and they may be changed without affecting the edifice. My friend, the eminent physician from Broome, [Mr. Hand] would so rarely act upon the general system of one of his patients because of some local disease to which a topical remedy would be certain, complete and effectual. If at any time it becomes necessary to improve these five locks, or if it is now necessary—improve them. But I beg this Convention to understand what is the real situation of things, and how entirely illusory and deceptive the idea is that because inconveniences may exist now or hereafter in the special case of these five locks out of the seventy-one, we are to pull down all the expensive structures of the Erie canal which we have been thirty years in erecting and which have cost a large share of the thirty-two millions we have expended upon that work; that we are to pull them down, from one end of the canal to

the other, and build new structures, without much knowledge, without any accurate or reliable knowledge, almost without inquiry, by an edict of this Convention foreclosing all future investigation or consideration, an edict incorporated into the fundamental law of the State. One word on the subject of the irregularity of the business which comes upon the Erie canal. That is greatly exaggerated. Gentlemen will find in the auditor's report every year two tables. One shows the lockages for that year at various points, by the months separately stated, and the other shows the monthly lockages at Alexander's,

just above Schoenectady, for the whole period the canal has been in operation, now thirty-three years. Any gentleman who will look at these tables can see to what extent this alleged irregularity exists, and what are its limits.

The first of these tables, for 1866, shows the lockages at the guard lock at Black Rock, which is the first east of Buffalo, as follows:

May June July Aug. Sept. Oct. Nov. Dec. Total.
2,141 2,825 2,768 2,070 2,074 2,944 2,336 165 19,597

The last page of the other table embraces the period when the exports of breadstuffs was largest. It is as follows.

STATEMENT No. 40.—*Extract from Lockages at Alexander's.*

YEAR.	1861.	1862.	1863.	1864.	1865.	1866.	Total.
Commencement of each season, ..	May 1	May 1	May 1	April 30	May 1	May 1	33 Years.
Close of each season, ...	Dec. 10	Dec. 10	Dec. 12	Dec. 8	Dec. 12	Dec. 12	1834—1866.
Number of days in each season.	224	224	222	223	226	226	
March, ...							21
April, ...							24,434
May, ...	3,716	4,392	4,596	3,225	1,684	2,710	152,517
June, ...	4,401	5,061	5,062	4,490	2,808	3,124	161,300
July, ...	3,622	5,376	4,085	2,965	3,812	4,697	154,371
August, ...	3,781	4,635	4,409	5,337	4,437	5,104	146,769
September, ...	4,349	5,260	3,441	4,305	3,856	4,598	153,966
October, ...	5,396	5,347	3,915	4,697	4,233	4,607	183,041
November, ...	5,925	4,517	4,168	3,636	4,464	3,990	189,498
December, ...	99	489	369	308	491	1,143	9,777
Total, ...	31,179	34,977	39,071	28,742	26,037	29,863	1,145,954

Corn, which last year formed about thirty per cent of the tonnage of the Erie canal, is generally shelled in the winter. It comes in to Chicago in the early spring, and it comes upon the Erie canal largely in the spring and summer months. Wheat comes, in a larger proportion, in the fall. Lumber, which is about thirty per cent of the tonnage of the Erie canal, prefers as much as possible the summer months. I have looked over the monthly shipments by lake as given in the annual trade reports of Chicago and Milwaukee; and they illustrate how much the statements made before the Canal Committee are exaggerated. Of course business does not distribute itself with absolute equality during the summer; but before it reaches the Erie canal it has gone through two distributing agencies. The railroads which bring it to the lake ports have not an unlimited equipment, and the vessels which are kept upon the lakes cannot be multiplied or their capacity expanded, indefinitely or suddenly. When the business has passed through these two distributing and equalizing agencies and reached the Erie canal, it does not find an indefinite equipment upon the canal of boats, horses and crews. When it happens that you have large crops, and also at the same time a sudden and great foreign demand for breadstuffs, from a famine or from a war, then all the means of transportation of every kind are pressed to their utmost. The natural relief is for prices to rise, and the surplus business overflow into inferior channels, if such can be found. At such

times, more difficulty is often felt upon the lakes than upon the Erie canal. I remember that in 1863, while I was professionally employed in the city of New York, in a litigation of great dimensions concerning a canal, a very eminent gentleman from Chicago who called on me, complained of the want of capacity of the Erie canal. On a little inquiry, I found that freights were then relatively higher on the lakes than on the canal; and asked him if it would not be best to enlarge the lakes. I have looked over the weekly and monthly averages of lake freights and canal freights for the last six years contained in the various reports of the auditor, and such as I can find in the Chicago trade reports for the last ten years; and, without having had time to make an exact computation, the general impression on my mind is, that the fluctuations in freights were more extreme upon the lakes than upon the Erie canal. At such times, too, the real difficulty is in getting boats rather than in getting boats through the locks. No man can afford to keep vessels enough upon the lakes or boats enough upon the canal to supply all the demands which may be created by famine or war in Europe; or even to do a disproportionate share of the business of a season in a small part of that season. Fluctuations will happen; and, to some extent, may be provided for; and distribution, to some extent, must be enforced. The adjustment is a matter of practical business judgment. I have had frequent occasions to act on similar questions, and have generally favored a full equipment; in one in-

stance for a railroad, on the ground that it was enough to show a reasonable certainty that the additional equipments would be in use eight months of the year. I think the Erie canal ought to have and be kept with a surplus capacity, of reasonable extent. But it is neither prudent nor possible to provide for extreme cases; or to satisfy the views of those who indulge in such gross exaggerations as some of the witnesses before the Canal Committee; who think that two-thirds of the business of the Erie canal is, or ought to be, or could be done in one-third of the season; or who ascribe to its want of capacity the rise in the prices of transportation, which happened, in those instances, even more on the lakes than on the canal, from causes which, for a short time, overtaxed the equipment of both. Sir, what the Erie canal now requires, in respect to its locks, is, first, efficiency of management; second, a good condition of repair, especially of the gates; third, that the five locks at Port Byron, Jordan, and at Syracuse, by which the loaded boat ascends, on its way to tide-water, be thoroughly examined and their power to pass the loaded boats tested by actual experiments, under the supervision of the most practical and reliable engineers; and, if it be found necessary or likely to become necessary, to improve them and give them greater power—that the best plan for that purpose may be devised and carried into seasonable execution; fourth, that the condition of the locks generally be, in like manner, examined and tested, for the purpose of ascertaining whether there be any defects in their condition or working which impairs their efficiency, and, if so, what are the causes and what are the remedies proper to be applied; and, in this connection whether there be any fault in the police exercised over the boats where-by some are allowed to become obstructions to the others in the navigation; fifth, that the question of doubling the locks, thirteen in number, I think, between Montezuma and Rochester, which are now single, should be duly considered; and, that as soon as shall be practically necessary, that improvement should be made. I notice that one of these locks—the Brighton lock, east of Rochester, which is represented in some of the annual tables of lockages in the auditor's report—makes about two-thirds as many as Alexander's. In the report of 1861 it is stated as making 243 lockages in one day. In 1862 it made 24,597 during the season. If these thirteen single locks can get along comfortably, there must be considerable surplus capacity in all such of the double locks east of them as are equal to these in construction and situation. Further on in the future, if the Erie canal shall continue to grow in east-bound business, other questions will arise. But in the mean time, if you take care of it, I can not see how it can exhaust the capacity it will possess, without having paid largely of the debt the State now owes on its account; and—if you are not compelled much to reduce the tolls—without having furnished ample surplus for these and other improvements. If at length, years hence, it shall need a more extensive enlargement of its capacity, you will still find yourself able to accomplish that object without changing the fundamental character of the work. You may con-

sider whether you will construct a third line of locks, first, in the part of the canal east of Syracuse, and afterward throughout; or whether you will double the length of one tier of the locks, adapting them to pass two boats like the present. I speak now merely of the question of capacity, and not of any change in the form of the boat which you may make for other reasons. If you wish to lengthen the boat you might do so to more than 150 feet and still be in the same proportion to the present width of seventeen and a half feet, which the proposed 200 feet boat would bear to its proposed width of twenty-three feet. I am not recommending any such project. I am only saying that, if you decide to go for length, you had better pause a little to consider whether you cannot make your present double tier of locks available before you pull down these excellent and costly structures. Mr. Welch of the Delaware and Raritan, told me the other day that he would not recommend boats more than eighteen feet in width, and yours are now seventeen and a half. But you need not and ought not to change the form of your boat in our present state of knowledge on the subject, merely to get a greater annual aggregate of tonnage—merely to get more capacity for the canal. You should change it only because the new boat would be a boat of more useful and economical service; because it would be a better instrument of transportation; and then after counting the cost of the advantage you expect to secure, and seeing that the gain is worth the cost. You will have ample time to consider that subject; to test every plan by experience; and to know more of the future of all questions concerning transportation, before you will be forced to act. The questions to which I have adverted are of great complexity; I do not to-day assume to adjudge them. They can be determined only by careful examination and practical experience. Wise engineers can work out the results that will be most useful and least costly. We have not arrived at these questions yet. When we do arrive at them let us treat them practically, like men of sense and judgment; men with a trust to perform in the disposition of the public money and the care of the public property. I now wish to make a few observations upon the subject of economy of transportation, and I am not aware how much of my time is gone.

The CHAIRMAN—The gentleman has thirty minutes yet.

Mr. TILDEN—Economy of transportation—economy per ton per mile—depends upon the water-way. Ninety-five per cent of all the time consumed in the transit on the Erie canal, assuming that the water-way and the locks are in equally good relative condition—ninety-five per cent would be consumed in passing over the water-way; at, say two miles an hour, and but five per cent in passing the seventy-one locks, at say seven and a half minutes each. That is a fair proportion. If you want economy of transportation you will attain it by making the water-way good, by making it the best that the case admits of. But you cannot gain it by shortening the time of passing through the locks. If you should shorten the time of the lockages to five minutes each, you would gain less than three

hours in the whole transit from Buffalo to Albany. If you should allow each lockage to consume ten minutes, you would lose less than three hours in the whole transit of three hundred and fifty miles. If you would save time in the whole voyage you must save it in that part of the service which consumes ninety-five per cent of the whole time of the voyage, and not in that part of the service which consumes but five per cent of the whole time of the voyage. By quickening the lockages you will obtain a greater aggregate capacity. Capacity depends upon the locks, and economy depends on the water-way. The law that governs all economy in machinery is—first, that you have a machine with the best adaptation to the service which you seek to get out of it, the highest amount of adaptation which can be secured in every part of the machine collectively, the highest aggregate which can be formed in combination; secondly, that then you use that machine to the highest capacity of which it is capable. These are the two elements that constitute economy in the use of machinery, and form the law that governs all machinery. There is no more utter fallacy than the idea that a large boat is, of necessity, any more economical than a small one. It is, under certain conditions; without these conditions, it is not. Even upon the Atlantic ocean you may make a Great Eastern or a Great Republic, which are not fit for use, which are worthless by reason of their excessive size, which are never capable of returning anything to their owners. On the lakes generally they have not reached the maximum of economy in transportation to be attained in the construction of vessels. I do not think they have on Lake Erie. Vessels have gradually grown to their present size, and I think they tend to still larger dimensions. But there you have an unlimited water-way. The three elements of cost in the canal transportation business are—the cost of towing, the cost of manning, and the cost of the use of the boat; and on all canals these elements are from twenty-five to forty per cent each, varying under different circumstances. It would not be much out of the way to put each of them at one-third, though the use of the boat is apt to be more and the manning less. The towage was calculated in 1835 at forty per cent; it was about the same in 1846. It is probably a little less now when done by towing companies—at thirty-five cents a mile; and some of the boatmen, furnishing their own horses, count it not much more than thirty per cent. Economy depends much upon the time of your transit over the canal. As you quicken your transit, shorten the time for carrying to their destination a given number of tons, you lessen every element of the cost of the service: you enlarge the number of tons carried in a given time; and, by enlarging the divisor, you reduce the rate of cost per ton per mile. In canal navigation you have two fundamental conditions—first, that you have to experience the resistance of water, and not the resistance of air, as by a railway train; second, that the water is not an unlimited expause, as the ocean or the lakes, but in a narrow channel, where it is impossible to move except at a very moderate speed, impossible to move with economy except at a very slow

speed. You must respect these conditions if you expect to do an economical business. Why is it that if you had the Erie canal fourteen feet deep and one hundred feet wide you would never bring a lake vessel upon it for the mere purpose of transporting property? It is, first, because your lake vessel and your canal-boat being of different forms, the canal boat would carry thirty-five to forty per cent more cargo out of the aggregate weight of vessel and cargo, and you would have to draw three or four times as much dead weight, in proportion to cargo, in your lake vessel as you do in your canal boat; and second, that your lake vessel costs about three times as much as a canal-boat per ton of capacity. You would employ a much more expensive instrument, and get much less service. I say nothing of another failure in adaptation, the shape of your lake vessel compared with the shape of your locks. If you had the Erie canal 14 feet deep and 100 wide and should bring your lake vessels through it would cost you double for every ton per mile of cargo what it costs in the canal-boat, because the instrument of transportation, so excellent upon the lakes, is not adapted to the use you make of it upon the canal. Sir, why is it that steam, so far, has not been successfully employed on the canals? It is because the machinery displaces from the boat a quarter of the cargo; and inasmuch as the whole cost of towing by horses is not more than thirty or forty per cent of the whole expense, the boatman knows that he had better have cargo in there and draw it by horses than to lose one-quarter of the whole avails of his voyage by the filling up of his boat with machinery. Sir, I do not mean to say that you will not—I hope that you may—be able some time or other, perhaps, to invent machinery so small, so light, so compact that with some form of boat you will be able to use it on the canal. To-day that has not been done. It has not been done on the Delaware and Raritan canal; it is not done there to-day. In a few moments I will address to the committee some remarks on that subject. Sir, when you come to navigate, the rule is that the resistance of the water is the square of the velocity with which the body moves; at two representing the speed, it is four; at four representing the speed, it is sixteen; so there is a practical limit to your velocity, even when the body is moving in an unlimited expanse of water. But when you come into the canal there supervenes another mechanical difficulty—the bottom and sides of the narrow channel confining by fixed physical boundaries the water-way in which your boat is moved. And in that water-way so confined, it is impossible to move your boat except at a very low rate of speed, without a great waste of power—and anything like a high rate of speed in the movement is impossible. No force capable of being applied is sufficient,—the boat comes to a stand. The engineers, in 1835, planned the Erie canal so that the cross-section of the boat should be such as to give the greatest economy for its transit. The rule on that subject deduced from the experiments of the French engineers, referred to by the gentleman from Rockland [Mr. Conger] is that the cross-section of your boat should be not more than as one to

six and forty-six hundredths of the cross-section of your water-way. That rule is, to some extent modified in practice, for the reason that, though you may lose by not having the greatest economy in towing, you may make up out of the other element of cost, enough to indemnify you for your loss in this particular, and, on the whole, to gain—within certain limits. A few years ago I had occasion to make a very careful examination of this whole subject of the proper proportion of the boat to the water-way in a controversy which existed between a coal company doing business in the city of New York, and the Delaware and Hudson canal company. The canal company had made two changes in their canal—an improvement and then an enlargement, and on the results of the enlargement, in cheapening the cost of transportation per ton per mile, a certain portion of the toll depended; and the question involved a very large sum of money. A very low rate of speed was found to exist in the movement of the boat. The boat moved through the water-way, as was proved there, at the rate of about 14 7-100 miles in a day and no more, and no more speed could be got—a little less than six-tenths of a mile an hour. The transportation was not economical. I do not intend to allude to any debatable topics, because the controversy is still in the courts; but several things were undisputed. In the first place, about sixty thousand voyages were tabulated, being all the trips recorded in the books of the canal company for eight years, four years of the small boat and four years of the enlarged boat; and the fact of a reduction of speed was clearly established, and about how much reduction; and the time of the movement of the large boat was accurately ascertained, at the very low rate I have mentioned. In the second place, many of the best engineers in the country, experienced in canal construction and canal navigation, were brought there to testify, and with one accord they said this: "You cannot expect a good navigation if your water-way is less in its cross-section than four and a half times the cross-section of the boat." My distinguished friend, Judge Parker, and my distinguished friend, Mr. Hardenburgh, were in the case, on the side opposed to me. They offered no testimony to contradict this testimony of the engineers. There were a great many points in dispute in that controversy; but this point was not. Now, sir, what you propose to do to-day, if you adopt the plan of the Canal Committee, is, in my judgment, to make the mistake of violating the due proportion between the boat and the water-way. If there be anything, the judgment of the best engineers—most conversant with canal construction and canal navigation—if there be anything in the best experience had in this country, you will make a boat which is not adapted to your water-way; you will get no economy in your transportation unless you make an extensive enlargement of your water-way. You may lose the economy you

now have; you will gain now new economy. Sir, the transportation on the Erie canal is now very cheap. You have now very fine adaptations, and an excellent navigation, if you keep it in order; and at very low rates of cost, I have here tables showing what it has been for eight years, and also comparing it with lake freights. I would like to show that table to the Convention. I would be willing to have it printed for the use of the Convention, but in the restricted period allotted to me in this discussion, I cannot present the table; I can only allude to the results. The main advantage which the lakes have is that, from Chicago to Buffalo it is about a thousand miles, and transportation for a thousand miles, of course, can be made much cheaper than it could for a few hundred. If you will take the freights from Toledo for the last five years, I think you will find that the transportation has not been very much cheaper on the lake than the transportation on the Erie canal, exclusive of tolls. That is, to say, where the voyage is only three hundred miles, you have secured, well-toward as much cheapness of transportation on the canals, excluding the tolls, as on the lakes—you have approached that point near enough to show that you have attained very satisfactory results on the Erie canal; very excellent adaptations; a very superior instrument of transportation, which should not be fundamentally changed in its character, without great consideration. Sir, I did intend to comment on the report of the State Engineer in 1864, on which the claim that you will reduce the cost of transportation fifty per cent, by this change in the structures of the canal, to be made in order to adapt them to the intended change in the form of the boat—is founded. I have that report here—I have that estimate—it is ridiculous. It begins by stating the present cost of transportation which is to be reduced fifty per cent. It makes that present cost 2.16 mills per ton per mile. One mill per ton per mile for 350 1-2 miles is nearly equal to one cent per bushel of corn for the whole distance. The exact result, as I computed it, is 2.12 cents for bringing a bushel of corn from Buffalo to Albany. That cost is to be reduced by the proposed new boat to 1.04 mills per ton per mile; or 1.02 cents for the carriage of a bushel of corn 350 1-2 miles, from Buffalo to Albany. Why, sir, the price of bringing a bushel of corn from Buffalo to the Hudson river is to-day about five cents, a little less, exclusive of tolls; and that can not afford any profit to the carrier. The average price, as shown by the tables, for the last six years, is about seven cents. Another table for 1858 and 1859; and the former year was the lowest ever known in transportation, when there was a general collapse on the canal, on the lake, and among the railroads. The lowest point touched was in June, at about 3 1/2 cents; and the average of the year was about 5, as that of 1859 was 6 3-10.

The following are the tables:

TABLE I.

MONTHLY AVERAGES of freights of corn, per bushel, deduced from weekly averages in the auditor reports, which are made up from daily reports of Chicago Tribune, Buffalo Express, and Oswego Advertiser.

CORN—1861.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson river.	River to New York.	Tolls.	Buffalo to New York.
April,.....	12 8 1	.....	.....	.....	.....
May,.....	6 8 7	5 3 3	.....	4 8 3	12 8 1
June,.....	6 8 1	3 3 0	.....	4 8 3	10 3 8
July,.....	5 2 5	8 7 8	.....	4 8 3	10 5 6
August,.....	8 8 1	3 9 8	.....	4 8 3	10 8 1
September,...	12 9 7	7 6 7	.....	4 8 3	14 5 0
October,.....	17 3 5	10 0 5	.....	4 8 3	18 3 8
November,...	14 7 5	14 2 5	.....	4 8 3	23 5 8
Av. without April,.....	10 5 6	6 8 9	2 6 1	4 8 3	14 4 3
Av. with April,.....	10 2 4	.....	.....	.....	.....

CORN—1864.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson river.	River to New York.	Tolls.	Buffalo to New York.
April,.....	.....	.....	.....	.....	.....
May,.....	8 0 6	7 0 4	.....	4 8 3	14 5 2
June,.....	12 5 6	8 9 2	.....	4 8 3	16 2 2
July,.....	6 3 2	10 1 1	.....	4 8 3	16 9 2
August,.....	7 7 5	10 9 8	.....	4 8 3	18 3 8
September,...	7 5 0	8 5 5	.....	4 8 3	16 3 2
October,.....	7 6 2	8 5 6	.....	4 8 3	16 1 1
November,...	12 7 5	8 5 9	.....	4 8 3	18 4 1
Av. without April,.....	8 9 4	8 9 4	2 7 8	4 8 3	16 5 1

CORN—1862.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson river.	River to New York.	Tolls.	Buffalo to New York.
April,.....	.....	.....	.....	.....	.....
May,.....	6 1 5	4 1 7	.....	4 8 3	11 5 0
June,.....	7 6 9	3 7 3	.....	4 8 3	10 8 1
July,.....	11 0 6	5 1 7	.....	4 8 3	12 2 6
August,.....	6 6 9	5 8 0	.....	4 8 3	12 1 8
September,...	9 5 0	7 6 0	.....	4 8 3	15 1 8
October,.....	11 8 7	8 2 9	.....	4 8 3	16 1 2
November,...	14 2 5	9 4 8	.....	4 8 3	17 3 1
Av. without April,.....	10 4 9	6 8 2	2 6 1	4 8 3	13 7 6

CORN—1865.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Tolls.	Buffalo to New York.
May,.....	6 7 5	4 9 3	.....	4 8 3	12 7 2
June,.....	6 6 0	4 6 1	.....	4 8 3	11 6 1
July,.....	7 9 4	5 6 1	.....	4 8 3	12 4 4
August,.....	6 6 9	5 6 7	.....	4 8 3	12 5 2
September,...	10 7 5	6 3 6	.....	4 8 3	13 5 2
October,.....	13 8 8	11 1 7	.....	4 8 3	19 2 2
November,...	11 5 0	12 0 4	.....	4 8 3	20 3 2
Av. without April,.....	9 0 7	7 2 0	2 6 4	4 8 3	14 6 1

CORN—1863.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson river.	River to New York.	Tolls.	Buffalo to New York.
May,.....	7 8 3	4 8 6	.....	4 8 3	12 6 9
June,.....	9 0 5	5 0 0	.....	4 8 3	12 3 3
July,.....	4 2 5	5 3 6	.....	4 8 3	12 6 9
August,.....	4 2 5	4 6 0	.....	4 8 3	11 9 3
September,...	4 7 5	4 2 5	.....	4 8 3	12 0 8
October,.....	7 2 7	6 2 1	.....	4 8 3	14 4 4
November,...	7 7 8	9 7 3	.....	4 8 3	17 6 1
Av. without April,.....	6 5 6	5 7 2	2 7 9	4 8 3	13 3 9

CORN—1866.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Tolls.	Buffalo to New York.
May,.....	11 1 9	4 3	.....	4 8 3	11 5 5
June,.....	13 6 2	7 0 4	.....	4 8 3	14 2 2
July,.....	9 6 3	8 0 5	.....	4 8 3	12 3 2
August,.....	8 4 4	6 4 8	.....	4 8 3	12 3 2
September,...	10 3 7	7 3 0	.....	4 8 3	14 3 2
October,.....	15 2 5	7 5 4	.....	4 8 3	14 3 2
November,...	11 7 5	9 5 5	.....	4 8 3	16 3 2
Av. without April,.....	11 4 7	7 1 8	2 2 9	4 8 3	14 3 2

* Estimated.

TABULAR II.
Monthly Averages of Freight, per bushel.
 1858.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Tolls.	Buffalo to New York.
April.....	4.	.....	.....	3.8.6.4	.....
May.....	3.1.6	6.9.7.6	1.5.0	3.8.6.4	12.3.4
June.....	3.7.5	3.6.3.6	1.5.0	3.8.6.4	9.0.0
July.....	3.6.	4.6.3.6	1.5.0	3.8.6.4	10.0.0
August.....	2.5.8	3.3.0.6	1.5.0	3.8.6.4	9.6.7
September.....	3.1.2	4.6.3.6	1.5.0	3.8.6.4	10.0.0
October.....	3.7.	5.3.3.6	1.5.0	3.8.6.4	10.7.0
November.....	3.	5.6.3.6	1.5.0	3.8.6.4	11.0.0
	3.2.7	5.0.2.3	1.5.0	3.8.6.4	10.3.9

1859.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Tolls.	Buffalo to New York.
April.....	4.	6.0.0.6	1.5.0	3.8.6.4	11.3.7
May.....	3.2.5	4.8.8.6	1.5.0	3.8.6.4	10.2.5
June.....	3.7.	5.4.3.6	1.5.0	3.8.6.4	10.3.
July.....	3.	6.1.3.6	1.5.0	3.8.6.4	11.5.
August.....	2.9.4	6.1.9.6	1.5.0	3.8.6.4	11.5.6
September.....	5.2.	4.0.3.6	1.5.0	3.8.6.4	9.4.
October.....	6.8.7	7.5.1.6	1.5.0	3.8.6.4	13.8.8
November.....	7.4.4	10.1.9.6	1.5.0	3.8.6.4	16.5.6
	4.5.5	6.3.0.1	1.5.0	3.8.6.4	11.6.6

To save one cent per bushel on 350 miles of transportation is the object presented in this report; and the statement of the existing cost in the present condition of the business of transportation is scarcely more than one-third—certainly less than one-half what the real present cost is. The result is made out by counting eight and a half days as the time of the trip down, charging the wages and support of the crew at about a fair rate; charging for the use of the boat about half, I think less than half what it is certainly known now to cost; and then, sir, leaving out of the calculation all the time taken in loading the boat and in unloading the boat, and all the expenses running during those times which are just as much a charge on the transportation as when the boat is actually moving; and leaving out also all the time and all the expenses of the return trip. The boat is taken from Buffalo down to tide-water, and expenses charged per diem during the time of its passage down, but not one cent charged during the time of the return; leaving the boat and the crew and the horses to pay themselves and feed themselves during every part of the entire service, except the imaginary eight and a half days of the transit down. Sir, if in any incorporated company in which I am a director, an engineer should present such calculations as the basis of important action, I should deem it my duty to move to dismiss him for incompetence.

tency. And yet that calculation, so far as I can find, is the sole basis of the assertion so often made and reiterated until our ears are wearied—that the change in the locks proposed by the Canal Committee will reduce the cost of transportation on the Erie canal fifty per cent. That engineer's report of 1864—which contains it—is the substratum of all the monstrous growth which has developed into the scheme of the Canal Committee. Now, sir, one word as to the Delaware and Raritan canal. We have heard a great deal about that—it figures magnificently in the committee's report. I have taken some pains—I have spent three or four days in looking into that. I have seen leading parties doing business on that canal and some of the principal officers of the company which owns it, and I should to-day, if there had been time, have had a letter from the president of that company, answering interrogatories which I proposed to him, and which he kindly consented to answer. Sir, there is a canal, having just about such looks as it is proposed to construct on the Erie canal, at the expense of pulling up all the present splendid structures; and there is not a boat on it of the description for which we are to make this radical and costly change in the Erie canal. Not one. There are some little propellers which do merchandise business between New York and Philadelphia, merchandise generally, and the largest of them carry from one hundred and fifty to two hundred and fifty tons. They are not for canal service exclusively or even mainly. The canal is forty-three miles long, with thirty-five miles of harbor and river navigation between it and New York, and twenty-five or more miles of navigation in the Delaware, between it and Philadelphia. These propellers have the advantage in nearly two-thirds of their voyage of much greater speed than is possible in any canal—three or four times the speed. The canal is wider than the Erie, and its depth has been progressively increased from eight feet to nine or nine and a half feet, as stated in the last report. I conversed with several proprietors in these propeller lines. They said they would not take wheat as freight from Philadelphia to New York for less than five cents a bushel, besides tolls, which are one and a quarter cents; and that it is not desirable at that, and would not be taken at even eight cents, including tolls, if other freights were to be had. These charges would be nearly equal to those on grain from Buffalo to Albany, or about three times as much per mile. Sir, I did hear of one two hundred feet boat, at the office of the superintendent of the towing company, but I was informed that this boat was considered a nuisance to its owners and everybody else, and was cut in two, a bow put on and a stern put on, and converted into two. And to-day, in that canal, which brings down a tonnage nearly as large as the Erie, which brought from Philadelphia to New York last year two millions and a quarter tons of coal, it is all brought in canal-boats, and towed through the canal by horses.

Mr. KERNAN—How much cargo?

Mr. TILDEN—From two hundred to two hundred and forty tons. The president of that company told me that he thought it would be unwise

in us to make the locks on the Erie canal more than twenty feet wide. He thinks that eighteen feet boats give the most economical navigation. I should say in regard to the coal tonnage—I must speak somewhat irregularly, because my time is nearly elapsed—that a certain portion of it, about one-quarter, comes from the Lehigh region, and comes down the Lehigh canal, and Delaware division and feeder to Bordentown, and of course, to avoid transshipment, it would come by the same boat through; about one-quarter comes down the Schuylkill canal, and comes through in boats used on that canal; but about 700,000 tons come by the Reading railroad to Richmond, which is a part of Philadelphia, is destined to the city of New York, and at Richmond is first put into boats from the railroad. The canal is forty-three miles, and the rest of the hundred and three or more miles is river navigation on the waters of the Delaware and the waters of New York harbor. So that there is a great motive to use machinery in this short connecting channel. If steam could be used in that to advantage, they could use it freely in the great waters on each side of the canal. Of that 700,000 tons, which first takes the water at Philadelphia, about 200,000 is transported by the Reading railroad itself. It was found a necessity to make the Reading railroad practically terminate in the city of New York; and that great corporation has gone into the boating business, in order to regulate the water-rates of transportation in connection with its own line by rail. It has a few schooners for use on Long Island Sound, in connection with the canal, and of about the same tonnage as the canal-boats; but its main equipment for this business is seventy-four canal-boats, all constructed for it or by it—expressly to be used in the business—about seventeen and one-half in width and generally of dimensions similar to the boats of the Erie canal. I had memoranda of these dimensions, but cannot at this moment lay my hands upon them. The president of the Reading railroad is, I think, an engineer, as he certainly is an able business man, and the president of the company which owns the Delaware and Raritan is certainly an experienced engineer, as is also the superintendent of that work, and both men of intelligence and force. Sir, it may be that such gentlemen as these, the official heads of great corporations, distinguished for enterprise, commanding ample capitals and ample revenues, do not bring into use the best means for economical transportation which they can find. They certainly intend to do that. If, up to the present time, the means now in use are not the best means possible, they are the best means which these skillful and experienced officers have been able to discover. I do not say that some man will not come along to-morrow with an invention which will supersede the present mode of towing or the present shape of the boat. I do not intend to limit the discoveries or inventions of human ingenuity—I never have done that. I have never ventured to set boundaries to the growth of business in future years, or to decide on the future aggregate tonnage of the Erie canal. I hold myself open to consider without too much distrust or incredulity all proposed improvements; to test all that afford

a reasonable probability of success. But, acting as business men, as prudent men, as men of care, as men of wisdom and caution, when we begin at the Erie canal and pull up from one end of it to the other, its double lines of locks and its aqueducts—its massive masonry—its splendid and costly structures, the durable monuments of engineering skill, we are bound to do so on actual knowledge, to the highest degree attainable—the best of scientific advice—on ascertained experience so far as the teachings of such experience can be collected and applied. We cannot put any man's crotchet—I say, into the Constitution on this subject, without a gross breach of trust and duty to the people of the State. Sir, we have no information on this subject in the report of the Canal Committee, or of the sub-committee or in the testimony taken before them, or in the reports of previous years, to justify us in taking such action as is here proposed. We have no reliable information as to the present condition or working of the locks, tending to such conclusions in respect to their incapacity as are alleged. We have no thorough tests applied to them; or any tests under the supervision of competent and trustworthy judges. We have no such tests as were applied by Mr. Flagg in 1843; or by the Finance Committee in 1846; or as would be applied by any prudent business man. In place of such evidence, we have only loose assertions and gross exaggerations; contradicted by actual experience and by record evidence. We have no evidence whatever that the proposed boat of two hundred feet length and twenty-three or twenty-four feet width—to accommodate which all the locks and structures are to be changed—would be an improvement for use in the present water-way of the canal. We have constantly heard the Delaware and Raritan cited as an instance of the practical success of the proposed improvement; and yet not a human being who cites the authority seems to have taken the trouble to obtain any correct information on the subject, or even to inquire of any one of the numerous parties in New York doing business on that canal; and it turns out that there is no such boat in use there; that there is, as yet, no use of steam to propel any canal-boat there; that there is no practice on that canal or judgment of its managers sanctioning our proposed boat, but exactly the contrary. Why not try the experiment on that canal—the experiment of the new shape of the boat and its propulsion by steam—before revolutionizing the whole construction of the Erie? Then, as to the adaptation of the new boat and the new locks and aqueducts to the water-way of the canal—there has been very little investigation or consideration in that respect. The very slight and partial examination before the Canal Committee are chiefly remarkable for the obvious effort to get witnesses to favor a predetermined conclusion, and the very small success which attended that effort. A conclusion so opposed to the whole theory on which the adaptations of the Erie canal were formed, as opposed to the judgment of all the best canal engineers, so opposed to all the experience which we have hitherto had anywhere in this country ought at least to be fully discussed and thoroughly

investigated before we adopt it. We have nothing before us but hasty assumption. Again, has it been even claimed that the new boat of such great dimensions, is adapted to towage by horses—or is the whole operation completely dependent on the success of steam propulsion in the canal? We have no information on that subject. How utterly worthless are the estimates as to the reduction in the cost of transportation which are submitted to us, I have already shown. Sir, I repeat, with a full sense of the responsibility of the declaration—and I know there is nobody who would be held by the public opinion of the Western States to a higher accountability for his action upon such a question than I should. I do not hesitate to confront it on the distinct ground that, if there are to be improvements made, we have not before this body, as yet, any reasonable and satisfactory evidence upon which we are to act. Sir, I believe that if you were to enlarge the locks in the way proposed, you would find it absolutely indispensable to enlarge the water-way, in order to get a good transit for a boat increased in width and length so much as this boat is proposed to be. And the boatman will make, he always has and will hereafter, make his boat just as wide as it can get through the locks. Then, sir, you will have but one lock in place of two. The present equipment is worth many millions, and must continue in use. How can you increase capacity by locking boats in pairs through one lock instead of locking them singly through two locks standing side by side? Sir, if I were compelled to adopt either alternative, I would to-day, sooner vote to build another independent set of the large locks, than vote to try to save the old material by putting it into the new single lock which it is proposed to construct. I observe that Mr. McAlpine tells the Canal Committee that it will cost more to use that old material. Mr. Stuart, who is one of the fathers of this project, expects to save a million of dollars. I asked Mr. Jervis the other day, when he was here to see me on some other business, and he was inclined to agree with Mr. McAlpine. I asked Mr. Welch last week in New York, and he was inclined to the same opinion, although neither gentlemen had made it a subject of very much study. And I fell in casually with an old friend of mine, who, for twenty-five years has been the chief engineer of the Wabash and Erie canal in Indiana, which is longer than the Erie, but which the railroads are driving out of existence, and he told me, "Don't flatter yourself that you are going to save more than half of the old material, particularly if the cement is good, and you take it down in the winter." Sir, when I consider the immense inconvenience to the navigation which the attempt to use the old material will cause—the doubt whether it will result in any saving of money—the loss of the use of the present locks and the probability that the construction of the one set of long locks will be followed by a demand for a second set, I am more afraid of the economy of the committee than of their extravagance. I think their economy is more perilous than their extravagance. I think, if I may be allowed the expression, that their economy is more extra-

gant than their extravagance itself. Sir, we have on the Erie canal a good adaptation. I do not say we can never improve it, but I do say, however, that we should not rashly attempt a reconstruction of it, which alters fundamentally the conditions of the transportation; which alters the proportions between the boat and the water-way—between the structures and the water-way; which changes the complicated adaptations of boat to canal—adaptations of boat and crew and towing power on which economy of transportation depends—I certainly say, sir, that it would be most unwise in this Convention to put in the fundamental law of the State of New York—what, sir? Engineering. What, sir? Hydraulics, and then to issue our mandate to the legislative bodies of the State to go on with the work of construction tied up by our conditions. Aye, sir, to enact new laws and reverse old, known laws in engineering and hydraulics. Sir, one of the conditions imposed by the committee is that you shall reduce the tolls—and, unless I greatly mistake, if it happens, not from any diminution of the currency, but from the gradual increase in the supply of the products, that you have a heavy fall in the agricultural prices you will be compelled to reduce the tolls. That we shall not reduce the tolls! Why, sir, the Convention of 1846 did not dare to put such a provision in that Constitution. The Committee on Finance, in 1846, did not dare to insert such a clause. A second condition imposed by the committee is that you shall not enlarge the prism of the canal, though that may be absolutely necessary to the use of boats such as your new locks will bring upon the canal, and though Mr. Jervis tells you without an enlargement of the prism you will make neither capacity nor economy. The third condition is that you shall pull up the double locks from end to end in the midst of this immense tonnage, doing the work early in the spring or late in the fall or in the winter—perhaps compelled to build a house over every lock in order to save the old materials, perhaps keeping the canal closed a month earlier and later, as suggested by Mr. Stuart—that you shall go on and do this work in this way. Sir, one word as to the cost of this proposed work. I told one of the engineers yesterday that, having had a good deal to do with construction in the last five years, I believed that an estimate founded upon fifty per cent addition to the prices of 1860 could not by any possibility come out right in the present state of prices. There may be a fall hereafter, but there has not been a time in three years when anything in the way of construction could be done at less than from eighty to one hundred and twenty-five per cent on the prices of 1860. Well, sir, he admitted that prices were lower in 1863, when these estimates were made, than they have been since, and that these estimates would not now suffice. Sir, this is an incomplete, insufficient, crude, immature, inconsiderate project, which no man in ordinary business would find himself justified in acting upon without a great deal of further information. Sir, what the Erie canal wants is more water in the prism—more water in the water-way. A great deal of it is not much more than six feet, and the boat drags along over a little skim of

water; whereas it ought to have a body of water larger and deeper even than was intended in the original project. Bring it up to seven feet—honest seven feet—and on all the levels, wherever you can, bottom it out; throw the excavation upon the banks; increase that seven feet toward eight feet, as you can do so, progressively and economically. You may also take out the bench walls. One of the best forwarders in the city of New York told me the day before yesterday that he could make trips in a quarter less time, and reduce the cost of transportation one quarter, if you would give him an honest seven feet. Sir, I will undertake to say that if you will appoint in full charge of the Erie canal men who can be picked out in this State, and let them manage it for a year on these principles, practically, they will get a greater reduction of transportation by an expenditure of a million of dollars, than my friend, the gentleman from Erie, will get by his gunboat enlargement, if it is carried into effect, at a cost starting with eight millions, and culminating in twenty or thirty or more millions.

Mr T. W. DWIGHT—Mr. Chairman—

Mr. HATCH—The gentleman from New York [Mr. Tilden] said that he always voted for equipping railroads for capacity to do a business for twelve months, provided that capacity could be used for eight months, and that he regarded that as economy in transportation by railroads. If that is economy in transportation upon railroads, why, I would ask the gentleman, would it not be economy to apply the same rule as to transportation upon canals?

Mr. TILDEN—I will answer the gentleman when I get an opportunity. Mr. Chairman, I hold in my hand a letter addressed to me by Mr. Jervia, which, if it be the pleasure of the Convention, I will submit for the purpose of being read.

The CHAIRMAN—Will the gentleman from Oneida yield?

Mr. T. W. DWIGHT—Will it be taken from my time?

The CHAIRMAN—It will.

Mr. SEYMOUR—I move that the committee do resolve that this letter be read, so that we can hear it. We want all the information on this subject we can get, without any reference to time.

The CHAIRMAN—The Chair is of the opinion that the committee has no right to consider such a motion, acting under the instructions of the Convention.

Mr. T. W. DWIGHT—I will allow it to be taken out of my time.

The SECRETARY proceeded to read the letter, as follows:

ROME, N. Y., September 4, 1867.

Hon. S. J. TILDEN:

Dear Sir—You ask my opinion on the views presented by report of committee in Convention in relation to State canals.

1. I disapprove of the plan of superintendence by a general superintendent. On this point I do not think it necessary to add to my letter to Mr. Huntington on this subject, referred to Canal Committee.

2. The main feature is the capacity of the Erie

and Oswego canals to accommodate the traffic. The committee assume that—

First. The canals have not sufficient capacity for the demands of transportation.

Second. That they are not adapted to the cheapest transportation.

They propose to remedy both defects by enlarging the locks to two hundred and twenty-five feet length by twenty-five feet width, to provide for boats two hundred and twenty feet long by twenty-three feet wide. They propose no enlargement of canal except to take out a portion of the inside slopes, so as to increase the bottom water-line to fifty-two feet, leaving the top width as it is. I have not the time to make a proper examination of a subject of so much importance, and can only take it up in a general way.

It is claimed that with double locks and boats carrying, say, two hundred tons, the canal is not able to accommodate the transportation that offers.

It appears that in 1847, when the average cargo of boats was sixty-seven tons, the tons delivered at tide-water were 1,431,252. Now, if the locks had been doubled, the tonnage by the boats of 1847 would have been 2,862,504 tons. The tonnage by present canal in 1862, by boats averaging one hundred and seventy tons, the largest was \$2,917,094 tons, but little in excess (almost the same) as could have been done by the old canal with double locks; and for the year 1866, or any other year, except 1862, the old canal with double locks could have done the business.

Now it clearly results that if the present canal has reached its capacity, then nothing has been gained in capacity by its enlargement—that is, boats of one hundred and seventy tons on the present canal have not increased the capacity of the canal.

Another view as to capacity. The lockages in 1847 with single locks for boats averaging sixty-seven tons was, say, 44,000. In 1862, with boats of one hundred and seventy tons and double locks, the lockages were, say, 35,000. Now, the canal had reached its capacity in 1862, the capacity for lockages in number of boats passed of the one hundred and sixty-seven ton boats, compared to the sixty-seven ton boats, is as one to two and a half—that is, the old locks would pass two and a half boats to the enlarged locks one passed. This is almost exactly the same ratio as the respective lockages—so it is clear, on this supposition that it has reached its capacity, nothing has been gained in capacity by the enlargement that could not have been gained by simply doubling the old locks.

From this it appears the old arrangement of locks and boats had a superiority to the present locks and boats. The difficulty cannot arise from the relative section of boat to prism of canal, in the enlargement this was more favorable than in the old canal.

That the present boats require twice and a half the time required for the old boats to pass the locks, indicates some wrong in the construction or management of the present boats. If it is not the case, then any enlargement of locks and boats could not increase the tonnage capacity.

If delays equivalent to the increased size of boats have been found in the present case, when it has been connected with more than increased rate of prism of canal, what ground is there to expect benefit to the capacity, by enlarging boats, with no material enlargement of prism?

But I do not believe the canal has reached its capacity. I do not believe that with proper adaptation and good management, it will require more than once and one-fourth the time to pass the present boats through the locks, as compared with the old boats.

If boats are properly adapted to locks, so as to leave proper way for the displacement of water as the boat enters or leaves the lock, with a prism of canal adapted to the easy management of boats, there should not be more than one-fourth time added to that required for the old boats.

This would provide for double the tonnage of 1862.

The committee seem to adopt the opinion that a canal-boat within limits that can pass another boat will be navigated economically, according to size and capacity of boats. This, so far as I know, is not sustained by any well-ascertained experience. To enlarge the boats as proposed, without enlarging in a corresponding degree, the prism of canal, will, in my opinion, be a positive damage to the capacity and economy of the canal transportation.

In my judgment there should be a careful scrutiny into the particulars of locks and boats, to find the difficulty that is supposed to exist. That there is a difficulty that may be corrected, I have no doubt.

This is a subject of too much importance to be disposed of in a hasty manner. I am for doing what is expedient to make the canal what is necessary to its capacity and economy of transportation. But this requires a thorough investigation of all the questions that influence this subject. In the first place, a thorough investigation and correction that will make the present canal as useful as is practicable, and as transportation promises, let the whole question be thoroughly investigated and fully reported upon, in all its bearings, so that the proper improvement may be decided on after full consideration of the subject.

It should be kept in mind that a boat to be most economically navigated, must have a proper relation to the prism of the canal.

I cannot go into particulars,—in fact I have not the data; but I should regard it unwise to enter on so important a matter without full investigation.

Respectfully yours,
JOHN B. JERVIS.

Mr. T. W. DWIGHT—Mr. Chairman, in commencing to speak upon this subject at so late a stage of the debate, it will surely not be expected that I should go over the ground, as far as statistics are concerned, as they have been very fully presented on both sides of this question. My object will be simply to give a general view of the subject, endeavor to collect as far as I can, the leading principles which seem to underlie it, and from the consideration of those general principles, to endeavor to discover the rule which ought to control us in our action. Now, it seems

to me, Mr. Chairman, that we ought in the first place, to distinguish between what an ordinary proprietor would do in such a case as this which is now before us and the State. We may assume, for example, that there is a canal like this great Erie canal which we have before us for the purpose of discussion, owned by a company like the Delaware and Hudson, or the Delaware and Raritan company. Now, what would be the object that such an organization as this would seek to accomplish by means of an enlargement of the canal? They would look simply at their own personal advantage. They would undoubtedly be guided by an enlightened self-interest. They would make all such enlargements of the water-way of the canal, and all such enlargements of the locks as would contribute to them a greater result and greater amount of toll, so that the work would be a profitable investment. Now, sir, I hold that a State is not to look at a canal in this way; because if a State is simply to be regarded as a proprietor, then it should, according to all ordinary principles of political economy, leave the canals to private enterprise. It should leave them as it does a railroad, to the capital and skill of men who will be disposed to use the canal for the purposes of making profit. And the only just ground on which a State can manage a great public work, is that there is something more than this, something more than mere proprietorship to be accomplished. Now, sir, looking at the ownership of the canals of the State in this manner, what are the points that are to be gained, or may be supposed to be, in the contemplation of the State? It seems to me that the State ought to regard this question in these aspects: In the first place look at the advantage of that part of its domain through which the canal runs; secondly, at the great cities which it has built up at either extremity of the canal; thirdly, at its relation to the Western States—the place which it occupies, the geographical position which it holds toward them; fourthly, at its position in reference to the general government; and finally, at the enlargement question as it affects its own honor, having commenced so great a work as this, and having a just and honorable pride in its continuance and development. Now, sir, having looked at the question in that way, having regarded it in its broad and general aspects, we are then prepared to inquire, as a second general proposition, whether it is necessary to have the canals enlarged; and if we answer both these questions in the affirmative, and decide that there are strong general grounds why we should have the enlargement, that it is, in the true sense, necessary; then, finally, we reach the financial question: whether we have the means wherewith to make the enlargement. Now, sir, I shall prefer to discuss this question in this manner, rather than in the manner of the gentleman from Orleans [Mr. Church], who proposed to examine, in the first place, our pecuniary condition and then apply the views which he thus derived to the enlargement. I propose to inquire whether we ought under any consideration, to have the enlargement and then to see whether we have the money. Now, sir, having mapped out the ground which I propose to occupy in discussing this question, I wish

to look at the first subordinate question—that is, the advantage to the country through which this canal runs. What, sir, has been accomplished by the Erie canal? We have had that disclosed to us over and over again in the course of this debate. But all the results that have been obtained, all the growth of the State, all the wealth that has been gathered, may be attributed to one cause, which is simply this; that it has brought the producer and the consumer together—it has in a measure annihilated one of the great difficulties in all industrial endeavors, which is, that the producer and consumer are separated. If we consider, for example, the mahogany log, lying in the woods of Honduras—of what use is it as it lies there, a mere log of wood? It is worthless. But bring it to the place where it is wanted, then at once it assumes a great, and perhaps untold value. The difference between the producer and the consumer has been annihilated—they have been brought together. This is what the Erie canal accomplished the moment it was opened. It brought into immediate contact these two classes, and annihilated, as it were, the distance between them. Now sir, if we can reduce the cost of production, the cost of bringing the producer and consumer together, we substantially place them side by side. I hold that it is right and proper for this Convention to see whether, by the enlargement of the canal or of its locks, on any suitable basis, these two classes can be brought nearer together, so that the cost of freight will be reduced. Freight being reduced and produce being assumed to have a fixed price at tide-water, rises in value at the place where it is produced. Then the farm on which the product is grown rises in value. These causes bring in their train wealth, and all the other useful results which we have seen attend in large measure the original opening of the canals, and which must, in smaller degree, take place whenever this difficulty of bringing the producer and consumer together is diminished. These are the considerations then, sir, which attach to the interests of that portion of the State through which the canal passes. Now, let us look at the second great point—that is the advantage to the great cities which have been built upon the extremities of this line of the canal. In what I say on that point I shall confine myself mainly to the advantage to the city of New York, because whatever is advantageous in this way to that city is, in a smaller degree, useful to the city of Buffalo. Consequently it will not be necessary to consider them singly, but simply to see what the effect of this enlargement is upon the city of New York. In order to ascertain that, it is necessary for us to look over a wider field, to go out beyond the city of New York and the State of New York, and to see the great result which was accomplished by this Erie canal, not merely for this State, but for all the Western States, with which it forms a connection. In regard to that, much has already been said upon this floor. But there has been one class of considerations urged which I wish, at this point, to rebut; and that is this: It has been said on this point, that as the West grows stronger, it grows wealthier; the amount of

the products that would come to tide-water would be necessarily diminished, and therefore that the Erie canal had already reached its culminating point, and that the products that passed over it might be expected to gradually decline in amount, because more and more of the western produce would be consumed at home. That was the argument of the gentleman from Delaware [Mr. Miller]. That was the argument of the gentleman from New York [Mr. Opdyke], who essayed to speak for the city of New York and its merchants. Now, sir, I was sorry that the merchants of New York were represented in that way upon this floor, because I do not believe that they would take that view. Those merchants need no encouragement from me. Although I have no right in any manner whatever to speak for them, I am at liberty to admire, as I do, their far-seeing sagacity, their boundless enterprise, their equally boundless generosity and generous rivalry. Their character demands that they should take a broad view of such questions, gathering the lessons of the future from the experience of the past, and having a strong and well-founded faith in the future developments of this country. No one man can speak in a short hour the varied sentiments which affect this large and most esteemed class of our fellow citizens. There is one thought which I am sure that they would express most emphatically, that no consideration will divert them from the effort to secure and hold fast the vast and growing trade which Providence has permitted, in pursuing its natural channels, to pour untold wealth into their city. Whatever means will accomplish this purpose they will steadily pursue. I can not believe that they take the somber view of their assumed representative, and have settled down to the disheartening conviction that the western trade is about to decline. No, sir; every action on their part, every enlarged and ennobled structure, be it store, dock, or warehouse, distinctly shows the contrary. These gentlemen to whom I have referred, it seems to me, leave out of sight one or two very important considerations which have a bearing upon this question. One of these is that the introduction of machinery in raising agricultural products has tended largely to increase the amount of produce beyond what is wanted for consumption at any ordinary increase of population. When production has been obtained in the ordinary slow processes of agriculture there might be some truth in their objection, but when it takes place by the machines we have now in operation, and, in all human probability, by improved machinery—because in all these cases improvements go on, in accelerated ratio—we shall find that the products will always be much in advance of what is wanted for the immediate population, until the whole of the West becomes filled up. And long before that time the country may want all the advantages that the Erie canal can give it in the way of transportation. Why, sir, only one-sixth of the territory of the great States with which we are immediately connected, is at present occupied. And as to these five-sixths that remain unoccupied, what is to prevent the use of a large amount of agricultural machinery to develop the resources of a still virgin soil,

and to bring us in a great overplus beyond what is wanted for the consumption of the people who may produce it. Such has ever been the result of machinery in manufacturing industry, producing far in excess of the amount that the producers need. From the many new and important inventions by which manufacturing and agricultural production has been greatly stimulated and increased, we have reason to suppose that greater results will be reached in the future. Now, sir, another point. We possess, as we have been told by the gentleman from Erie [Mr. Hatch], a very large territory beyond Lake Superior, large as the whole of the United States, subject to cultivation. Some few public improvements will open that whole region so that it can be cultivated. We have a population ready to go in and occupy it. The Asiatic races, such as the Chinese, are at hand. They are already crowding into California by hundreds of thousands. They are engaged in various branches of industry and are employed in great numbers on the Pacific railroad, advancing eastward with it. They will undoubtedly be occupied all over the western country in the various branches of agricultural production. We know perfectly well that that class of men do not consume all that they produce—that they need but comparatively little, and there will necessarily from that class be a surplus which can be used, and will demand an outlet by means of some such communication as that which we have in our own State through the Erie canal. So, sir, I think we need not apprehend this difficulty that the Erie canal is to be closed up, or that it is not to be used because there are not enough products. I believe that the law that has already marked the progress of that canal in respect to the amount of products which have been carried will continue, and that they will in years to come be double, as they have been in years that are past, and will come to tide-water and will be carried to Europe or used in the domestic trade as they have been heretofore. Hence, it appears to me that the theory of the gentleman from Delaware [Mr. Miller] and the gentleman from New York [Mr. Opdyke] is not a far-sighted view to take of this subject. But, on the other hand, the broad, proper view to take is that we have in the Erie canal the great channel of navigation, the great means of communication between tide-water and the Western States, and that it must and will be occupied to its utmost capacity, even though it should be enlarged. Now, sir, without going farther on this branch of the subject, for the lapse of time admonishes me that I must not dwell upon these points, I will come to the third topic which I propose to consider, and that is the position of this State toward the other States. The gentleman from Orleans [Mr. Church], it seems to me, has looked upon this question purely as a financial question. He has spoken rather contemptuously, as I regard it, of the “glory” of the canals. Unless they produce revenue they are to him nothing. All the rest, in the language of Pope, “is but leather and prunella.” It seems to me that this is not the view, situated as we are in New York, to take of this great question. Why, sir, we are placed in a geographic position toward the other States

which makes it necessary for them to pass over our territory in order to carry their products to the sea. What right have we to sit here coldly, to be supine in this matter, and say that we will fold our arms and do nothing for the advantage of other States? What right have we to say that we will look at this question merely as a question of debt, merely as a question of finance and not look at it according to the position in which we are, and the place which Providence has assigned us? What right have we to say to this family of States, “We will not give you an outway to the sea. We will furnish you no means except those of the most limited character of going to tide-water.” What, taking all the history of the world, has been the fate of those States which endeavored to close up the mouths of navigable rivers, and would not permit persons who lived on the upper part of the stream to go down through those rivers, and thus find access to the sea? And what better is our position than that if we have the only territory over which the people of these States can properly pass, and then substantially say to them, “You shall not pass over it?” Remember, they have no right to enter upon our land; no matter what they want, no matter what avenue they need—they cannot have it—the sovereignty of the great State of New York is in the way, and they cannot build a canal, or a railroad, or any other means of transportation through the State? They say to us—they have said to us by meetings of their boards of trade, and by all the channels of communication through which they could address us—they have said to us: “Open to us a broad and free pathway to the sea, we will pay you a liberal toll but we must go forward to the ocean.” And what have we to say on this subject? Are we to say, “you shall have no such pathway?” Are we to say that because Providence has placed the Alleghenies in the way and there is no other feasible mode of reaching the ocean than through the State of New York, that therefore the sovereignty of the State shall stand in the way and the men of the Western States shall not go to the sea? Now, sir, that is a grave consideration to my mind. I have no interest in these canals of any sort whatever, except this great and overpowering interest to see that the people of the West, and the western part of this State, shall have a passage as free and unrestricted as possible to the sea for their products. I believe that the principles of the laws of nations teach that in all navigable streams that should be done. And I believe that by analogy, when we have the opportunity, we ought to give them, at a fair and reasonable charge, the same privileges that they would have if there had been, instead of this belt of land interposed between them and the sea, a navigable river whose mouth we endeavored to close. Now, sir, in regard to the fourth point which I have made, and that is the interest of the United States, we need not be told that we are a part simply of a great nation, and therefore we are bound not only to consider our own advantage but that of the entire country. Whatever contributes to the progress and glory of the nation should be regarded as favorably to the interests

of our own particular section. We are bound to rise to this still higher view, and see how the opening of unrestricted communication will affect the interests of the United States. I don't wish to look at this topic in any sentimental point of view, because I hold that the State of New York, if it builds or improves these canals, has a right to be reimbursed for all its expenditures out of their revenues, and, therefore, that there should be tolls levied upon them until every dollar of the expense has been paid. Then, I most heartily agree that the tolls should be reduced to such an extent as will simply pay the cost of superintendence and repair. There is a manifest reason why we should look at this question in a broad point of view and regard the interest of the whole country, considering whether it is not every way better for the general government, especially for the increase of its wealth, that we should have this means of carrying the surplus products of the different States to the ocean. Why, sir, we can show that it is so in a moment. What is the effect upon the property of the Western States if you have an unrestricted communication with the sea? Manifestly their land rises in value, because their products will be worth more. When their land rises in value there is a greater amount of property which can be taxed by the United States. Therefore it contributes not only to pay the burdens of the national debt, which now rests so heavily upon us, but also gives the United States, if in the future it has reasons for calling upon all its resources, an opportunity to obtain an increase of such resources. Therefore this is truly a national question. If it were not that we were situated as we are, it might not be. If there were hundreds of modes by which the Western States could have access to the ocean it would be a different question. But here remember there is only one proper means. There are others, no doubt, which might be obtained by enormous and unprofitable expenditure, but there is only one true and proper means by which these States can have access by water to the ocean. Now, sir, it is not only for the interest of the Western States, but it is for that of the United States, that these means of communication should be made open and free. And finally, sir, a word in regard to the honor of the State itself. Here we have undertaken to build this vast work; we have said to the Western States, "You shall have these means of access to the ocean." It would ill become the honor of a great State not to go on with that which is begun, and accomplish the purpose which it originally designed. It should rise to the occasion that presents itself, making the canal large enough at first to meet the demands which are made upon it, and then, as commerce presses, furnishing every reasonable facility to remove the pressure. I am not about to discuss the question whether the Western States will find some other means of communication with the ocean than that through New York, in case we act supinely, because I do not wish to consider the subject in that way. I wish to put it upon a broader ground. Even supposing that they could find some other means of communication, and that our commerce would be diminished by reason of west-

ern produce going by the way of the James river, I think that this should be the controlling consideration. We should look at the interest of the State, the interest of the sisterhood of States, the interest of the nation. If the Western States by means of our neglect, force their way to the sea by some other channel, they undoubtedly would do in their determination to accomplish what they undertake, it would be at a cost of immense treasure. It would be at the greatest loss and disadvantage, and would, therefore, be an injury to the country. I wish, therefore, to look at this question in such a way as to present frankly and boldly to ourselves our own duties in connection with this matter, without reference to any loss we might sustain. The case trade should take some other channel. We were sitting in consultation as a Senate of one of the commercial cities of the middle ages, and might properly confine ourselves to purely selfish considerations. But we can never forget that we are but a portion of a great nation which is vital in every part. Though we believe that its vitality is so great that it "cannot but by annihilation die," yet it certainly may languish, and when a part droops all the rest of the nation sustains loss. While I entertain these views, I have no doubt that the evils some gentlemen have predicted upon this floor will be realized in case we determine willfully and obstinately that we will not give access to the sea, though it be properly demanded. Having disposed of this first class of considerations, I come to the second branch of my subject, that is this: Ought we to place in the State Constitution the provision which I found in the report of the Committee on Canals. In other words, shall we say, as a rule, in the State Constitution, that this enlargement is necessary. On that point I must beg leave to differ with the Committee on Canals. I do not believe it is possible to regulate, specifically, such a question as that in the fundamental law. In the first place, we have had much dispute upon the floor upon the conflicting testimony of experts and others in regard to the point whether this enlargement is necessary; also in regard to the amount it would cost. Now, one of these questions is purely a question of engineering, that is the amount it would cost. The other is a question of fact, which it would seem impossible, to me, for such a body as this to determine. Therefore I think the Committee on Canals went too far when they endeavored to fix two points in the Constitution which are not properly capable of determination by this body. They have endeavored to compare two things which it is impossible for us, in our present state of knowledge, to compare. We cannot say it would cost precisely eight millions of dollars to do the work which they have told us it was necessary to do. Nor can we say that if the work was done it would accomplish the purpose. Nor can we say that the capacity of the canals is not sufficiently large. I think it is impossible for us to act as a jury here to try that class of cases which are purely and simply questions of fact. What we must do is to settle great and leading principles in the Constitution, and not endeavor to settle disputed questions of fact of this kind.

Therefore, I hope there will be some amendment proposed which will enable us to leave this great subject flexible so as to meet the necessity of the case. In other words, if it should be made to appear hereafter by any class of considerations that the canal enlargement is necessary to meet these great objects which I have heretofore detailed, then I desire that there should be a mode left open in the Constitution whereby the State might carry out what appears to be just and proper in this case. I shall be prepared to vote for any such amendment at the proper time. Now, there only remains to discuss the question which occupied so much of the time of the gentleman from Orleans [Mr. Church], that is the financial question. It seems to me there are one or two great defects in the report of the committee of which he is chairman and which he so eloquently defended on this floor. In the first place he has made a claim that the advances by the State to the canal debt sinking fund and for other canal purposes are to be treated as a liability of the State. The section, proposed by his committee, begins, "The outstanding debts of the State and other liabilities for the payment of which the canal revenues are pledged," are so and so, and amongst these moneys appears this \$18,000,000. Now, this sum of \$18,000,000, which the State has advanced by way of taxation and charged to the canal is nothing more than a method of keeping books; that is all. It is not a debt; it is a mode of keeping books. Let me illustrate. Suppose a man undertakes a manufacturing business; he builds a large manufactory, if you please. Now, what does he do? He sets down in the one column of his books what it costs him, and in another what he receives; the balance between the two is what he has lost by the manufacturing business or what he has earned. That is all there is of these \$18,000,000. The State of New York has determined that these canals shall be for paid out of the revenues. That is the great point upon which the thoughts of the people of the State have been fixed: that at some future time the canal debt shall be paid out of the revenue; and this charge of \$18,000,000 is only to show that these canals should be made to pay for themselves just as the manufacturing establishment should be made to pay for itself. It is no more a debt due from the canals to the State than would be a deficit in the case I have supposed of a manufacturing establishment. Therefore, it is perfectly right that the State should waive or postpone this reimbursement whenever and so long as it sees fit. Let us look at this matter a little more fully. Suppose a man had a great manufacturing establishment which yielded a revenue like this canal, and see what a revenue that is! Here we have a piece of property which has cost \$210,000,000. It has already yielded \$293,000,000 or thereabouts, perhaps a little more or a little less, so that \$7,000,000 now expresses the difference between what the canals have yielded and what they have cost. Here we have this immense property, (for no more splendid property of that size ever existed in the world) that cost \$210,000,000, that has substantially paid for itself out of its own revenues. In two years, according to the present receipts the

whole amount of the expenses of the canals will have been absolutely paid and the State will have a property costing nothing and yielding the most princely revenue of \$3,000,000 a year. Now, what would a man do who had such a property as that supposing it was a manufacturing establishment? Why, he would say to himself, if he found that there could be a great deal more business done in his establishment than there had been, "Is it not worth while for me to enlarge; is it not well for me to have a greater establishment than this, to employ more men;" and if he found on looking over his books that it cost him \$1,000,000, and had paid him \$900,000, he would say to himself "all I have to do is no more to make these charges against and in favor of myself on my book for the time being; let me postpone them; I will not insist that this month or this year this manufactory shall pay for itself out of its revenues. I intend it shall do so at some future time, but I will postpone it, I will gladly postpone it, because I see that by doing this work now I shall only make myself the richer." That is the way the capitalist would reason in an ordinary case. Shall the State reason in any different manner? Shall a great State adopt this picaresque policy recommended by the Finance Committee? Why, the whole working of the Constitution of 1846 has been to confuse and mislead the people of this State in regard to these magnificent works. It covered them up by all sorts of financial tricks and devices, so that the people have really been inclined to think that these canals were a sink-hole in which all their funds were being wasted instead of being such a marvelous source of profit as they have been. Why not let us look this question fairly and squarely in the face instead of endeavoring to cover it up by mere shallow and transparent devices? That is one of the points made by the gentleman from Orleans [Mr. Church]. Another point upon which he dwells very much is this, that we should be guilty of a breach of faith with the public creditors in case we postpone the payment of the general fund debt and the old canal debt of 1846. Now, I must beg leave to take issue with him there. Let us look for a moment at the object of a Constitution, and especially at the theory of the Constitution of 1846. What did the men who framed the Constitution of 1846 seek to do, especially in regard to its financial clauses? They had not the smallest thought of pledging all these revenues to the public creditors, but what they wished to do was simply to mark out limitations to the power of the Legislature. I admit that Mr. Hoffman, in his discussion on this subject, said that there was about \$4,000,000 or \$5,000,000 that had been raised under the law of 1843 which the public creditors had some sort of claim upon; but on the subject of pledging the canal revenues he also admitted that his object was to limit the powers of the Legislature, and that would naturally be the case, because what do we seek to do in a Constitution? We are not dealing with the public creditors; we are simply marking out the boundaries of power and saying what the Executive shall do, what the Legislature shall do and what the judicial power shall do. And when

we are establishing this finance article we say what the Legislature of the State is to do upon the subject of finance; that the revenues of the State shall be appropriated in such a way that the Legislature cannot lay hold of them and apply them in any other way. The object is not to give assurance to the public creditors. That is shown by the fact that all those debts had been incurred before the Constitution of 1846. The public creditors had no claim upon these revenues then, for they had already been incurred, and the amendment of 1854, which was in some respects a substitute for the financial article of the Constitution, was, of course, not then in contemplation. But it is said that the loans by the existing creditors have been renewed. That is nothing to the point. The true question is whether they were renewed on the faith of specific pledges in the Constitution. To determine that question it is necessary to inquire whether the creditors had any reason for placing reliance upon clauses which I contend were not inserted in the Constitution on their account. That argument does not advance their claim in any respect, for they must be presumed to know the nature of a Constitution and the object of its provisions. Moreover, a great State cannot safely be permitted to pledge the public revenues. It is in general the last resort of a desperate State, struggling for its very existence, to pledge specific revenues. The general government, for instance, during the war did not pledge the public revenues specifically; and no State can ever tell what emergency may make it necessary not to have its revenues specifically pledged. Therefore the presumption is all against a specific pledge by the State putting it in the power of the creditors to insist upon particular revenues. And if we take a further view of this matter we see the principles which properly govern it. If the argument of the gentleman from Orleans [Mr. Church] is correct, there could not be any limitation in the Constitution providing how a debt should be paid, and from what resources, without permitting the public creditors to lay hold of it, so that the State could not restrict its own servants without binding itself to third persons. I refer, for a confirmation of my views on this subject, to a passage that will be found in the Argus debates of the Convention of 1846, on page 721, if I correctly remember. The subject which was under discussion was this eighth section of the seventh article of the Constitution of this State: "No money shall ever be paid out of the treasury of this State, or any of its funds under its management, except in pursuance of an appropriation by law." Now, Mr. Hoffman, in advocating the adoption of that article which the committee will perceive has reference entirely to the incurring of debt, made this remark, as will be found in the passage to which I refer. I do not propose to give his exact words, for I cannot remember them, but the substance of his remarks was to this effect, that we had now fixed in the Constitution the fact that all debts were to be charged on the canal revenue, and that all future debts, without doubt, would be charged on the same revenues, and therefore it was the interest of every friend of the canals, and of cheap transportation, to see that there should be no new

debts contracted in the State; if there were the would be charged on the revenues of the canal and that would, from time to time, hamper and prevent their enlargement. A most shrewd device on the part of the greatest man to enlist the friends of the canals in favor of the non-contracting of debt. They were warned that if they permitted debt to be contracted, no matter for what, whether for canals or for anything else, according to the policy of the dominant party, it would have to be charged on the revenues of the canals. Therefore he says to them, significantly, you had better not unite in any contracting of debts, for if you do it will be charged to the canals. That was the policy of the Constitution of 1846, and not to pledge the public faith to creditors. It was simply that and nothing more, to say that the debts which should be incurred either presently or prospectively, should be charged upon the canals. Therefore the financial article realizes the great and favorite idea of Mr. Hoffman which was "pay as you go," and which I believe to be the cardinal idea of my friend from Orleans [Mr. Church]. I do not misrepresent him?

Mr. CHURCH—Not at all.

Mr. T. W. DWIGHT—That is his idea, "Pay as you go." Mr. Hoffman had the same idea; therefore he determined to induce the friends of the canals to join him by the significant warning to which I have referred. It is as plain as sunlight. In accordance with all ordinary principles the object of the constitutional clause was simply to regulate and limit the powers of the legislative department, without any thought of the public creditors. Therefore, while going as far as the farthest in favor of giving the public credit everything that he has contracted for, while would not remit the least farthing of what was fairly due, yet I would not say that a clause which was inserted in the Constitution with no view to the public creditor should be tortured into a specific pledge to him. While I say this in answer to what the gentleman from Orleans has stated, yet it is not necessary to go so far as this. It is not incumbent upon me to take this position, because as has been said by another, if the enlargement of the locks be shown to be necessary the means to accomplish the work can be provided in some other manner. But what I deem to be a strange thing, and what I think the Constitution of 1846 sedulously ignored, is this: that a great public work has the right, as it were, to claim that it should be supported and improved from its own revenues. That was the point on which the framers of the Constitution of 1846 mystified the people. I do not say they did this intentionally, but they certainly did mystify them, and the was a justification for what the gentleman from Ontario [Mr. Lapham] said, and which I will say in somewhat milder terms, that there has been thrown over this whole subject a mist which the people cannot readily disperse, and which prevents them seeing the true state of the case. They have been prevented from discerning that the Erie canal has always been a source of profit and had not the lateral canals been attached to it would have realized to the State great profits for many years. Now, the gentleman from Del

were [Mr. Miller] carried the view of the gentleman from Orleans [Mr. Church] even further, making it appear that even the revenues of the canals were fairly pledged to the public creditors for these eighteen millions to which allusion has been made, because they may have been supposed to have loaned their money on the faith of it. That shows how far this doctrine might be carried, that every payment which the Constitution prescribes shall be paid for a particular purpose, becomes thereby pledged to the creditors for that particular purpose. If the doctrine of the gentleman from Orleans is correct, what a warning it gives us, for every financial clause we insert in the Constitution becomes a pledge to the public creditors, so that we cannot divert the revenues even in time of war, or any other time, for any purpose whatever, without repudiation. We may have great sources of revenue, but be totally unable to use them. What a caution it must impress upon us that we put no more pledges, as he calls them, in the Constitution! His argument, as far as it had any influence on me, led me most strongly to oppose the insertion of any new clauses pinning down the State of New York so that it never shall use its means, no matter what the emergency may be. Is that a doctrine for a great State to pledge itself specifically to the public creditors, when its bonds are selling for a premium in the market, and when there is no the slightest occasion for checking or embarrassing the freedom of its financial action? Sir, I am surprised that such a doctrine as this has been promulgated. Now, we also have had solemn warnings from the same gentleman, growing out of the great amount of debt under which the United States government labors, and under which we labor, therefore, as a part of the United States. Reference has also been made to the amount of debt which is imposed upon the counties and towns directly and indirectly upon the State itself. I feel most strongly, none can more strongly feel the pressure of such considerations, and yet if I believed that the enlargement of the canals is necessary to accomplish the great purposes which I laid down in the first part of my argument, I should still have, in accordance with my own views, to consent to apply the revenues of the canals for the purposes of this enlargement. Although this debt is a heavy debt, it is in no sense unendurable. We have paid nearly \$250,000,000 of the principal, beside the interest, within two years, and we have seen no suffering. It is simply a little more severe straining upon the productive energies of the people, and the productive energies of the people are capable of enduring the strain if it is necessary. Not that I recommend or desire it; I deprecate it in every possible form; but I do consider that there are considerations under which a debt may be proper not to be deprecated, and that this is one of those instances, providing the enlargement is necessary. At the same time, I think that the burden of the debt has been greatly exaggerated. If it can be shown to me that the enlargement is necessary, the financial difficulties are of no great significance, but I need more light upon that point, and it is for that reason that I desire, instead of this clause reported by

the Committee on Canals, that we should have a flexible provision, which will enable the State to act when the necessity is established.

Here the gavel fell, the gentleman's time having expired.

Mr. PROSSER—Mr. Chairman, I am in favor of the substitute proposed by the gentleman from Ontario [Mr. Lapham], and have listened attentively to the objections which have been urged against it, and propose to consider some of these objections, and mainly those put forth by the gentleman from Orleans [Mr. Church], and the gentleman from Onondaga [Mr. Andrews]. I understood that these gentlemen object to the substitute substantially for the following reasons:

1. That in the disposition of the revenues by the Canal Committee, they have failed to properly provide for the State debts chargeable upon the tolls, and that to adopt this report would be a disgrace to the Convention and a disgrace to the State—virtual repudiation.

2. That the enlargement of the canals recommended is of doubtful utility, at any rate, and entirely unnecessary, as they can do three or four times the business they ever did.

3. That the cost of such enlargement is greatly underestimated when put at \$3,300,000 by the committee, and that it will cost, in the judgment of the gentleman from Orleans, \$50,000,000.

4. That the assumption of the committee that the introduction of the large boats proposed would cheapen freights is fallacious; that experience has proven the reverse; that the true way to reduce the cost of transportation is to reduce the tolls.

5. That if even it were necessary to make the improvement proposed, it is not proper to provide for them specifically in the Constitution, but leave the subject with the Legislature to submit the question to the people whether the work shall be done or not.

6. That it is a very expensive time to do the work proposed, and hence an improper one; and that the boats proposed would be quite too large for the prism of the canal.

To the first objection, that the committee have not properly provided for the debts for which the tolls are pledged by the present Constitution, I reply: The auditor of the canal department reports that all of the canals of the State are now under contract to be kept in repair, at an annual cost of about \$600,000, say \$581,000. Estimating as I do, for this argument, that the expenses may average for the next ten years \$1,000,000 yearly, which is more than the auditor estimates will be the expenses for the year 1867, the following will be the gross and net earnings of the canals upon the supposition that the trade shall increase at the rate of three per cent annually, which is only about one-half as rapidly as the tonnage from the Western States has increased for the past ten years:

In 1866 the gross tolls were.....	\$4,436,489
In 1867, gross receipts will be.....	\$4,500,795
In 1868, " " " " " " " " " "	4,704,660
In 1869, " " " " " " " " " "	4,948,084
In 1870, " " " " " " " " " "	4,999,478
In 1871, " " " " " " " " " "	5,148,879
In 1872, " " " " " " " " " "	5,297,577
In 1873, " " " " " " " " " "	5,456,504
	net 3,539,798
	3,708,880
	3,948,084
	3,993,478
	4,143,379
	4,297,577
	4,456,504

In 1874, gross receipts will be \$5,630,199	net \$4,630,199
In 1875, " " " 5,768,804	" 4,768,804
In 1876, " " " 5,962,468	" 4,962,468
In 1877, " " " 6,141,342	" 5,141,342
In 1878, " " " 6,325,552	" 5,325,552
In 1879, " " " 6,515,349	" 5,515,349
In 1880, " " " 6,710,909	" 5,710,909
In 1881, " " " 6,912,133	" 5,912,133
In 1882, " " " 7,119,496	" 6,119,496
In 1883, " " " 7,333,080	" 6,333,080
In 1884, " " " 7,553,072	" 6,553,072
In 1885, " " " 7,779,664	" 6,779,664
In 1886, " " " 8,013,034	" 7,013,034
In 1887, " " " 8,253,445	" 7,253,445

The Canal Committee, in their report, estimated the net revenues of all the canals until 1879, at \$3,000,000 annually. They intended to make a *very safe and moderate* estimate. If they had used the foregoing table of receipts, and estimating the annual expenses at \$1,000,000, they could, and I think *safely and properly*, have added to their estimate of net revenue for the period in question, including interest, the enormous sum of \$19,317,256, as the following statements show:

1867.—Add on gross receipts of \$4,436,639, in 1866, at 3 per cent increase,...	\$133,099
1868.—Add interest, Jan. 1, '68, to Jan. 1, '69, at 3 per cent, ...	3,963
Increase, at 3 per cent, '68 over '66, ...	270,191
Amount of increase and interest to Jan. 1, 1869, ...	\$407,253
1869.—Add interest at 4 per cent, 1 year, to Jan. 1, 1870, ...	\$16,091
Increase tolls, 1869 over 1866, at 3 per cent, ...	408,296
Amount of increase and interest to Jan. 1, 1870, ...	\$826,664
1870.—Add interest at 4 per cent, 1 year, to Jan. 1, 1871, ...	\$33,067
Increase tolls, 1870 over 1866, at 3 per cent, ...	556,896
Amount of increase, Jan. 1, 1871, ...	\$1,416,647
1871.—Add interest at 4 per cent, to Jan. 1, 1872, 1 year, ...	\$56,663
Add increase tolls, 1871 over 1866, at 3 per cent, ...	706,640
Amount of increase, Jan. 1, 1872, ...	\$2,178,870
1872.—Add interest at 4 per cent, to Jan. 1, 1873, 1 year, ...	\$87,155
Add increase tolls, 1872 over 1866, at 3 per cent, ...	\$60,038
Amount of increase, Jan. 1, 1873, ...	\$3,196,963
1873.—Add interest at 4 per cent, to Jan. 1, 1874, 1 year, ...	\$125,079
Add increase tolls, 1873 over 1866, at 3 per cent, ...	1,019,865
Amount of increase, Jan. 1, 1874, ...	\$4,271,907
1874.—Add interest at 4 per cent, to Jan. 1, 1875, 1 year, ...	\$170,876
Add increase tolls, 1874 over 1866, at 3 per cent, ...	1,133,580
Amount of increase, Jan. 1, 1875, ...	\$5,626,343
1875.—Add interest at 4 per cent, to Jan. 1, 1876, 1 year, ...	\$325,054
Add increase tolls, 1875 over 1866, at 3 per cent, ...	1,353,165
Amount of increase, Jan. 1, 1876, ...	\$7,303,563

1876.—Add interest at 4 per cent, to Jan. 1, 1877, 1 year, ...	\$383,141
Add increase tolls, 1876 over 1866, at 3 per cent, ...	1,525,878
Amount of increase, Jan. 1, 1877, ...	\$8,917,581
1877.—Add interest at 4 per cent, to Jan. 1, 1878, 1 year, ...	\$356,707
Add increase tolls, 1877 over 1866, ...	1,704,776
Amount of increase, Jan. 1, 1878, ...	\$10,978,978
1878.—Add interest at 4 per cent, to Jan. 1, 1879, 1 year, ...	\$439,151
Add increase tolls, 1878 over 1866, ...	1,688,941
Amount increase, Jan. 1, 1879, ...	\$13,307,039

The total expenses of repairs and management of all the canals of the State, have been for the past ten years, on the average, about one million of dollars annually; but for the year 1866, about \$1,400,000, and the gross receipts for 1866 over \$1,400,000, leaving the net receipts about \$3,000,000. Upon this basis of net revenues, as well as the average net revenues for the past several years, the Canal Committee estimates the net receipts of the canals until the first of January, 1879. Now, estimating, as I do, the expenses hereafter, at \$1,000,000, annually, which the auditor informs me will be about the total expenses of all the canals for 1867, I make the following addition to the net earnings, from the saving of expenses, as compared with the year 1866, and add the interest thereto, until the first of January, 1879 four per cent annually, as stated in the following table:

For 1867, saving of expenses, ...	\$400,000
Interest at 4 per cent, 1 year, to January 1, 1869, ...	16,000
1868, saving of expenses, ...	400,000
Interest 1 year to January 1, 1870, ...	\$816,000
1869, saving of expenses, ...	32,640
Interest to January 1, 1871, ...	\$1,248,640
1870, saving of expenses, ...	\$1,296,536
Interest 1 year to January 1, 1872, ...	\$1,698,536
1871, saving of expenses, ...	67,944
Interest to January 1, 1873, ...	\$2,166,520
1872, saving of expenses, ...	86,668
Interest 1 year to January 1, 1874, ...	\$2,653,188
1873, saving of expenses, ...	106,120
Interest 1 year to January 1, 1875, ...	\$3,189,317
1874, saving of expenses, ...	128,373
Interest 1 year to January 1, 1876, ...	\$3,685,690
1875, saving of expenses, ...	147,420
Interest one year to January 1, 1877, ...	\$4,233,118
1876, saving of expenses, ...	169,335
Interest to January 1, 1878, ...	\$4,802,443
1877, saving of expenses, ...	192,098
Interest to January 1, 1879, ...	\$5,394,441
1878, saving of expenses, ...	215,778
Amount, January 1, 1879, ...	\$6,010,219

SUMMARY of the foregoing tables, showing what additional amount of net revenue the Committee on Canals would have shown upon the basis of an annual increase of tolls at the rate of three per cent; and upon the further supposition that the annual expense would be \$1,000,000 instead of what were the expenses in the year 1865.

January 1, 1863, amount 3 per cent.,	\$133,089
Amount expense,	400,000
	<u>\$533,089</u>
January 1, 1866, amount 3 per cent.,	\$407,283
Amount expense,	816,000
	<u>\$1,223,283</u>
January 1, 1870, amount 3 per cent.,	\$626,084
Amount expense,	1,288,640
	<u>\$2,075,304</u>
January 1, 1871, amount 3 per cent.,	\$1,416,567
Amount expense,	1,686,586
	<u>\$3,115,153</u>
January 1, 1872, amount 3 per cent.,	\$2,178,850
Amount expense,	2,186,529
	<u>\$4,345,379</u>
January 1, 1873, amount 3 per cent.,	\$3,126,963
Amount expense,	2,653,189
	<u>\$5,780,152</u>
January 1, 1874, amount 3 per cent.,	\$4,271,907
Amount expense,	3,159,317
	<u>\$7,431,224</u>
January 1, 1875, amount 3 per cent.,	\$5,626,343
Amount expense,	3,685,960
	<u>\$9,312,039</u>
January 1, 1876, amount 3 per cent.,	\$7,206,562
Amount expense,	4,233,118
	<u>\$11,441,680</u>
January 1, 1877, amount 3 per cent.,	\$8,917,533
Amount expense,	4,802,443
	<u>\$13,719,976</u>
January 1, 1878, amount 3 per cent.,	\$10,978,937
Amount expense,	5,394,444
	<u>\$16,373,381</u>
January 1, 1879, amount 3 per cent.,	\$13,307,037
Amount expense,	6,010,219
	<u>\$19,317,256</u>

What are the reasons, if there be any, why we do not safely calculate that the trade will increase from beyond this State destined mainly to the water, as rapidly in the future (for the next decade at any rate) as it has in the past. The branch of the traffic has nearly doubled in the past ten years, and more than quadrupled in the last twenty years. I do not know of good reasons why such increase may not be expected, more especially if the business be done in a satisfactory manner to the people of the Western States, from whence latterly we derive most of our trade and revenue. Surely the population of the sea-board is rapidly increasing, and they rely mainly upon the West for their food. The population of England is also increasing; she, too, is a good customer, and takes more of us than she ever did if the trade can be slightly reduced; nor can there be any rational doubt of the Western States being able to fully supply the eastern demand. Scarcely

one-fifth of the arable land in these eight great food producing States has as yet been put under cultivation; and its exceeding fertility furnishes the safest possible reliance for a large and steadily increasing trade for very many years to come; provided only a cheap and tolerably rapid transit is afforded through this State to a market. The Canal Committee show, by their report, that with a stationary revenue based upon the last current year, or upon the average of the last seven years, the present debts will be paid as they fall due, the improvements recommended upon the canals paid, without taxation and with only light temporary loans, which will be paid in 1877 or 1878. All of this is accomplished with the tolls; leaving a balance at the close of the year 1878 of \$431,890. By adding what I estimate the increase of revenue, until that period, the surplus will then be nearly twenty millions more. Upon what a slender basis then, rests the very extraordinary allegations and charges of the gentleman from Orleans [Mr. Church] that "he believed the adoption of the report of the Canal Committee would be a disgrace to the Convention and a disgrace to the State, it was a question whether they would repudiate their solemn obligations and pledges to the people." Let us briefly review what the committee propose. Their report appropriates the canal revenues annually, so much as may be necessary, first, to pay the principal and interest of the canal debt falling due within the year; second, to pay the interest on the general fund debt due within the year, and to pay the principal of that debt on the first of January, 1879; but, if my estimate of the revenues shall be realized, as I think it will be, and exceeded, if the work recommended shall be speedily completed, all existing debts chargeable upon the tolls will be fully provided for long before that period. The residue of the revenue in each year, not exceeding in all the sum of \$8,300,000, is appropriated to pay for the improvements specified on the canals. In case there shall in any year be a deficiency to pay any portion of the interest or principal of the debts, for which the canal revenues, by the terms of the present Constitution are pledged, a loan for a brief period is authorized; and in case that cannot be obtained on satisfactory terms (something which no one anticipates) provision is made to supply the deficiency otherwise, so as to preserve inviolate the public faith. But there can be no deficiency if the trade shall increase as I have estimated, which, as before stated, is largely less than the average increase of the past ten or twenty years. Will the gentleman from Orleans point out where and how it is this committee have proposed to repudiate the solemn obligations of the people of this State, when they have fully provided for the payment, principal and interest, of every dollar of the State debt chargeable upon the canals as it falls due? Does the gentleman believe, or really suppose it probable, the obligations of this State would decline in the market under the provisions of the article reported by the Committee on Canals to the standard of the repudiated bonds of the State of Mississippi, so notorious many years ago? It would, in my judgment, be a very unsafe operation to offer him New York State bonds.

upon any such terms any time after the adoption of the article in question. Dismissing this objection as not worth the further consideration of this committee, I pass to the more important one—second, "That the enlargement of the canals recommended is of doubtful utility at any rate, and entirely unnecessary, as they have abundant capacity *now* to do *three* or *four* times the business they ever did." The object of constructing canals at all, of whatever size, is to cheapen transportation; and in constructing them, reference should be had, first, to the amount of business to be done, so as to fix upon the proper sized channel or prism; and, second, that the locks, aqueducts and bridges should be of such dimensions as would admit boats which can do the greatest amount of business at the lowest rate of freight. Bearing these propositions in mind, I refer the committee to the Erie canal before its enlargement—forty feet surface, twenty-eight feet on the bottom and four feet deep; the locks fifteen feet wide, admitting a boat eighty feet long and fourteen feet wide, carrying, in a draught of three and a half feet of water, about seventy-five tons. Such boats were used successfully for over thirty years and were found to be properly adapted to the canal and the business to be done. So Mr. Jervis says in a letter just read to the Convention. In enlarging the Erie canal, thirty feet was added to the width of the prism, and only three feet to the width of the lock. Here was the great mistake; the width should have been twenty-five or twenty-six feet, about one-half the width of the bottom of the canal, as was the case in the old Erie canal and all the laterals; and as is *generally* the case in other canals all through the country. This error the committee proposes to correct, making a lock as recommended and fixed in size by the canal board some three or four years ago; so that boats of a proper model for speed, and, say, twenty-three feet wide and from one hundred and fifty to two hundred feet in length (as shall be found most profitable), can conveniently navigate the canal with a cargo of five hundred to six hundred tons, instead of what is now the average cargo from Buffalo and Oswego eastward, taking all kinds of property, less than two hundred tons, in this way, reducing the cost of transportation nearly in the proportion as the cargo of the boat is increased. The locks being two or three feet wider than the boat instead of two or three inches, as now, ingress and egress will be easy and comparatively rapid, and a very largely increased tonnage can be passed through the canal, with only one tier of such locks at much less rates of freight and greater celerity, even by horse-power, as there would then be no detention at the locks. In addition to this, quite a portion of the business would be done by steam, as it would be profitable. Such has been the case elsewhere, and such, I think, will be the case here. My experience in this kind of business for thirty years, leads me to the conclusion as it does most others who have a like experience. I differ with the gentleman from Orleans and the gentlemen from Rockland and Onondaga, in this respect, and *may* be in error; but I *think* the error is with them. This committee must judge. Of one thing I am sure—I have no per-

sonal interests anywhere adverse to the interest of the State as regards the canals to warp my judgment; so, whether my judgment is good for anything or not in the case in question, the committee, I think, may rely upon its being unbiased, and in no way influenced by any interest in propellers upon the lakes, or elevators at Buffalo, as the remarks of the gentleman from Rockland seemed to infer, as I have no interest of the kind. So much as to the utility of the work proposed by the Committee on Canals. The enlargement of the aqueducts would follow, as a matter of necessity, the enlargement of the locks, and so with the wall benches, making the canals of uniform width upon the bottom. The approaches to the aqueducts, dwelt upon at large by the gentleman from Orleans, was only intended to mean three or four short curves, say five hundred feet each in length. These would require some slight enlargement; there are no more that do require it. This is confirmed by Mr. Goodsell, the present State Engineer, in the printed testimony taken by the Canal Committee, and will be found in the documents of the Convention. The capacity of the canals proposed to be improved to do business, is at present limited by the number and size of the boats that can be passed through the locks, and the draught of of water allowed, and practicable. In discussing this subject I shall confine my remarks to the capacity of the Erie canal to pass property eastward from Syracuse to Albany, through the double lock, remarking only in this connection that if the quantity of anthracite coal going westward should increase in the future in the same ratio it has for the past few years, the quantity going west upon the canal, added to other property going in that direction will reach the enormous amount of 4,000,000 tons annually, within ten years, from tide-water and from all points of shipment, apparently westward, 4,000,000 tons within six years from this time. Whether the present rates of increase shall continue or not, it is very evident from the demand for shipment at Buffalo to the Western States, coupled with the short supply of wood along the canals in this State, that the increase in this article is to be great; soon involving the question of capacity in the canal for its accommodation. Fully laden boats going west will require more time to pass them through the locks, than it will to pass light boats, and this, it will be perceived, has a very important bearing upon the capacity of the present locks to pass loaded boats eastward; for whilst the lock is occupied with a boat bound westward, it excludes of course the eastward bound boat. Several gentlemen have spoken against the substitute, basing their objection mainly, and some one or two I believe entirely, upon the alleged fact that there is no necessity at present, nor likely to be for many years to come, for any increase of capacity to pass all the boats eastward to tide-water, which the trade seeking this channel of transit will regain. That the railways will be likely to supersede the canal entirely, except for the coarser articles of lumber and coal. Upon the first branch of this proposition (capacity of the canal), I will now devote some attention, by first stating what has been

done for a series of years; the number of boats used to do the business, the lockages, tons delivered at tide-water; the average cargo of the boats, and the rate of freight from Buffalo to New York in the spring and fall weather; from which I shall show what can be done, about as surely as by the positive proof already established, of what has been done, when the locks were fully employed last fall, and this summer.

It will be seen by the foregoing table that in the years 1846 and 1847 there were added to the number of boats previously existing, more than passed out of use by decay, about 1,400, and there were about 2,500 before. This is established by reference to the trade and tonnage report. The freights were high in the spring of 1847, but not so high in the fall, yet the effect of this great addition to the number of boats found a proper expression in the lockages, as also in the tons of property delivered at tide-water; increasing each more than one-half. Why was not a like increase, or at least some increase, produced during the fall of 1861, 1862 and 1863 by a like addition of boats as compared with the year 1860, accompanied by the fact, as it was, of most exorbitant rates of freight as shown by the foregoing table, and by an abundance of business to be done with excellent navigation? There can be but one answer. It was because this large number of boats were so detained at the locks for want of capacity, that 4,200 could not perform any more trips during the entire fall of 1861, 1862 and 1863 than 2,800 performed in the fall of 1860; contrasting singularly enough with the year 1847, when a like addition of boats increased the business done over one-half as compared with 1845. The inability of the canal to the business as it was offered in the years 1861 and 1862 without delay, and at the fair rates of freight, drove from the lakes to a foreign market via Montreal, in each of those years, about fifteen millions of bushels of grain including flour, as well as much other property. Must we repeat several times more that experiment before the evidence furnished by it will be satisfactory and conclusive, that there is a want of capacity to do the business that offers in the fall of the year, when we have large crops and a good foreign demand for our products? I trust not. It has been fully established it would seem by the testimony that has been taken, and also by what was done last fall at Syracuse for eight consecutive days, when it is in evidence by two or three witness, that all was done that could be, with plenty of water and every thing in good order, boats waiting all the time to be passed through the locks, yet the largest number passed in any one day was 179, and the average for eight days was 159; an average as large as this has been made for months in succession, as the table I have presented shows. If the lockages can not be increased by adding boats by the thousand; with an abundance of business to do, and very high freights, as was the case in the fall of 1861, 1862, 1863, then again in the fall of 1865 and 1866, I should like to know by what process it is to be done? Some one better acquainted with this sort of business, will perhaps point out the method, to this Convention. I can not. To my mind it is *demonstrative*, that there was a lack of capacity at the locks to pass the boats, and that 2,800 can do as much business as 4,268, for they did so, in the fall of 1862 with the *greatest possible inducements*, for all the boats to run *steadily*, as rapidly as they could, for the freights were high, and the navigation excellent; this latter fact, is so reported by the canal commissioners. It is alleged that boats twenty-three feet wide and two hundred feet long are quite too large for

Lockages at Alexander's Lock, three miles west of Schenectady.

MONTHS.	1860.	1861.	1862.	1863.	1864.	1865.	1866.	1867.
April.....	831	3,710	4,892	4,636	3,325	1,804	2,710	1,078
May.....	4,363	4,101	6,892	5,092	4,450	2,184	4,366	4,866
June.....	4,003	8,682	6,378	4,062	2,982	2,519	4,087	4,006
July.....	4,703	3,781	4,682	4,109	6,227	4,327	6,104	3,328
August.....	4,892	4,349	5,260	3,441	4,205	3,866	4,068	4,774
September.....	4,892	6,860	6,847	3,915	4,607	4,268	4,007	4,774
October.....	4,924	6,925	4,617	4,166	8,095	4,454	3,980	4,457
November.....	149	99	480	809	308	491	1,143	4,417
December.....								57
Lockages from September 1 to December 1.....	38,430	31,179	84,977	30,071	36,749	30,087	39,883	39,392
Average daily lockages, largest month.....	14,706	15,000	18,064	11,638	13,487	12,028	13,105	14,079
Number of boats used to do the business.....	178	177	178	170	170	148	145	169
Average cargo, tons, per trip.....	8,788	8,407	4,267	4,268	4,008	3,808	4,088	3,700
Average freight, cents, per bush.....	no	no	75c	8c 2 1/2	11c 1 1/2	no	8c 10 1/2	10c 1 1/2
Average freight, cents, per trip.....	14,661	19,410	13,410	11,410	11,410	11,410	11,410	11,410
Boats employed at tide-water.....	3,410	3,410	3,410	3,410	3,410	3,410	3,410	3,410

the canal. Gentleman may calm their apprehensions on this subject, no person need put on a boat any larger than shall be found to be profitable; experience will settle this matter of size, very quickly, if we furnish an opportunity to do so. From the sized vessels, steam and sail, which have been in successful use for many years on the Welland canal in Canada, and the Delaware and Raritan canal in the State of New Jersey, there is no good reason to doubt that boats, as large as the Committee on Canals propose to provide for, can run very well by steam or by horse power, and very profitably too. Eight daily lines of such steamers run from New York through the Delaware and Raritan canal. Gentlemen will bear in mind that from Buffalo to the city of New York is five hundred miles; that from Buffalo to Rochester, ninety-five miles, the canal is eighty, ninety and one hundred and two hundred feet wide, and most excellent navigation for propellers of the size proposed; they will make four or five miles the hour there; from Rochester to Troy, two hundred and fifty miles, the canal is only seventy feet wide and two and a half to three miles per hour is the probable rate of speed of such a steamer; then upon the Hudson river a speed of eight or ten miles an hour is readily attainable; thus making the passage to New York from Buffalo by steam in less than one-half the time now required by horse-power, and the usual method of large tows, upon the river. Boats are now, and have been for many years, so I am credibly informed, running upon the Delaware and Raritan canal by steam, at the average speed of three to three and a half miles per hour, from 140 to 200 feet long, and 22 to 23 feet beam, and they are a perfect success; so they will be here as soon as there is a chance to use them. Such steamers can be constructed so they will carry 5,000 barrels of flour, and stow it under deck, where it will be kept clean, and landed without cartage in New York, on such dock as it is wanted. Such boats, if the model is easy, will run quite well by horse-power; having two or three feet more width in the lock than the width of the boat, as before stated; they would pass through, notwithstanding the increased size, quicker than one of our present large sized boats passes the present locks. No good practical boatman questions either of the propositions, and I submit that those wholly unacquainted with the subject of constructing, or navigating boats of any size, upon any waters, are not better judges. Then, again, it is objected that if the work is to be done, the amount provided by the Committee on Canals is quite too small, that it will cost \$50,000,000 instead of \$8,000,000. The committee examined this branch of the subject at very great length, and believe the work can be done within the limit proposed. The largest portion of the expense is in constructing the locks. Taking as a guide all the estimates we could get, coupled with actual proposals from responsible men to do the work within the sum named by the committee; bearing in mind that new locks have recently been constructed on the Champlain canal, of fine cut stone, and all the material found by the contractor, at between \$30,000 and \$40,000. One such just contracted at \$31,000, and

then ascertaining, as is very easy to do, that the additional length of the proposed large lock (being all in the chamber) is only some sixty-five per cent greater than those on the Champlain canal, and can scarcely cost, all of new material, much over \$50,000, of fine cut stone, at the same proportional cost of those recently constructed. The Committee on Canals thought they made a liberal estimate when they put the cost of rebuilding at \$40,000, yet within the limits of \$8,000,000 provided, more than \$50,000 to each lock may be allowed for the rebuilding and enlargement, and provide liberally for all the other items needed; still leaving a margin for engineering and contingencies of over \$500,000; hence, the Committee on Canals feel satisfied they have made full and ample provision for all the work they recommend shall be done, and for all that is necessary to enable such boats as they propose, to navigate these canals without difficulty. I should be willing to join in a contract to do the entire work for \$8,000,000 on the Erie, Oswego and Cayuga and Seneca canals; as to the Champlain, I do not feel so sure, but the State Engineer says that \$300,000 for that work is quite ample—and the committee thought so too. As to the allegation that it is an expensive time to do work; of course everybody knows that; but will the gentleman from Orleans who makes this objection, inform this Convention what reason there is to expect within the next ten or twenty years, the expense will be less; if his theory is correct that the annual taxes paid by the people of this State are more than six per cent upon all the property of the State? When it is evident that substantially the taxes of any people falls mainly in some form upon the laboring class of the country. Whilst the article reported by the Committee on Canals authorizes, that in enlarging the double locks, all the materials in the two locks may be used in making the new large locks, it does not compel this to be done; one may be enlarged and the other retained as it is for a while, if such shall be thought best by the Legislature or the Superintendent of Public Works. The committee were of the opinion that one large lock will pass very many more of the present sized boats daily than the present double locks will pass, for the reason that not only two boats can pass through at one time, but the width of the lock being some seven or eight feet more than the boat, ingress and egress would be easy and very rapid. This is evident, and is fully confirmed by what is daily done upon the Delaware and Raritan canal in the State of New Jersey. It is quite certain that canal will pass daily through its single locks, 24 by 220, more than twice as many fully laden boats of the size in use on the Erie canal, as can be passed through the Erie canal. In other and better words, it can do more than twice the business the Erie canal can do with the same sized boats, and with the full sized boats that can run there, if they had it to do, could do with great ease by steam three times as much. True, most of the business upon that canal is done by small boats coming from the Schuylkill and the Lehigh canals, and of course they are governed by the size of those works. For those reasons I think the gentleman

from Onondaga [Mr. Andrews] was greatly in error when he argued, as he did the other day, that what the Committee on Canals proposed, if put in practice, would actually lessen the capacity of the canals, instead of increasing that capacity. That gentleman also made an extended argument (most of which I heard, but not all), showing what had been done in past years by way of lockages, and then he stated, if I understood him rightly, that it was evident from what had been done, that the Erie canal has a capacity to pass some twelve millions of tons annually. He bases his estimate upon these data, that the navigable season is 226 days, lockages 198 daily, and the cargo of the boat two hundred and fifty tons, and from this makes up the capacity of the canal to pass so large a number of tons. If he will re-examine the reports of trade and tonnage, he will find that the canals are reported to be open about the first of May on the average, one season with another, but he will also find that the business done in May, as shown by the lockages compared with June for the past six or ten years, shows that the whole month of May is equal to only twenty-five days in June, and scarcely that; so it is idle to estimate for May over twenty-five days' effective business, as we do not get it. The reasons are, first, that the canal is seldom really ready to pass boats along freely before the 5th or 6th of May, and, again, the course of trade is such that always a very large number of boats lay up over winter in New York, and it takes time to distribute them. Then, again, the season practically closes, for property shipped from Buffalo to tide water, about the 15th of November, but I will call it the 20th of November, though this is quite too late for a full business to continue, and in fact, too late for a single shipment, with proper prudence, as the canal sometimes closes November 23. Then we have, calling May twenty-five days (and it is all that it is, effectually), to the 20th day of November, including Sabbaths, when boats do not load at either end of the route, and do not leave New York at all that day, a total of one hundred and ninety-eight days. Deduct for the average detention by breaks, what has been the average for many years, eighteen days, leaving one hundred and eighty effective days' navigation (not two hundred and twenty-six, as stated by the gentleman from Onondaga [Mr. Andrews]). Estimating the average cargo of the boats eastward at one hundred and eighty tons each, large and small, ten tons more than it was in 1866, including flour, ship stuffs, bran, oats, barley and lumber, all of which are light, and do not load the boats down to a draught of six feet of water, as wheat and corn do; put the lockages even at one hundred daily, each way, which, I think, more than they can be made to average, as the boats are wider than they were a few years ago, and all loaded with wheat and corn drawing six inches more water now than then, and cannot be locked so rapidly, and we then have an eastward tonnage capacity of 3,240,000 tons, instead of what the gentleman from Onondaga estimates. The time allotted me does not permit that minute examination of the capacity of the canal, based upon what has been done in the most

crowded portions of any season, as presented by the gentleman from Onondaga [Mr. Andrews]; but the various phases in which I have, although quite too briefly, pointed out the errors in that gentleman's calculations, will, I trust, enable this committee to come to a correct conclusion upon the subject, and if so that the substitute of the gentleman from Ontario [Mr. Lapham], ought to be adopted.

Mr. HARDENBURGH—I had supposed, Mr. Chairman, that when we approached the discussion of the report of the Committee on the Finances and the Canals of the State, we had really got into the deliberation of a subject which would not require any flight of imagination, and that we had really entered into what might be called the dry stubble field of facts—actual, practical sense, drawn from the experience of the past. But I soon discovered, after the subject was opened, that there was a domain attached to it bordering on wilder regions than could be opened up by almost any other subject; and it has been roamed over so long that it would not become me now, even if I were to follow those who have seen fit to stretch their wings and fly around the earth to bring arguments here to satisfy the people of this State that, in this particular stage of our national finances, we should venture further in the direction in which we have been driven so swiftly heretofore. It is said, I believe, that the enlargement—

Mr. AXTELL—I would ask the gentleman if he would give way for a motion to rise and report progress, for the purpose of providing for a recess until four o'clock?

Mr. HARDENBURGH—I will if the gentleman will make it five.

Mr. AXTELL—Very well. I move that the committee now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Axtell, and it was declared carried, on a division, by a vote of 50 to 31.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. SHERMAN, from the Committee of the Whole, reported that the committee had had under consideration the reports of the Committee on Finances and the Committee on Canals, had made some progress therein, but not having gone through with the same had directed their chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. AXTELL moved that the Convention do now take a recess until five o'clock.

The PRESIDENT—Unless by unanimous consent that motion can only be entertained under its appropriate head of resolutions.

Mr. WEED—I move that the Convention now take its usual recess.

The question was put on the motion of Mr. Weed, and it was declared carried.

So the Convention took a recess until seven o'clock.

EVENING SESSION.

The Convention re-assembled at seven o'clock.

The Convention again resolved itself into Committees of the Whole on the reports of the Committees on Finance and Canals, Mr. SHERMAN, of Oneida, in the chair.

The CHAIRMAN—The pending question is on the amendment of the gentleman from Erie [Mr. Verplanck] to the first section. The gentleman from Ulster [Mr. Hardenburgh] is entitled to the floor.

Mr. HARDENBURGH—When the committee rose this morning I was about to state the position I hold in respect to the very important question under consideration. I desire to state this position in the commencement of my remarks, and afterward to give the reasons that have led me to it. I, sir, am opposed to the scheme proposed here by the Committee on Canals. It involves, as they say, the immediate expenditure of some eight millions of dollars for the further enlargement of our public works; and as I shall endeavor to show, it will culminate in a vastly larger figure if anything is ever to be realized from these eight millions to be spent under their scheme. I am likewise equally opposed to inserting any section in this Constitution that shall for twenty years prevent the further enlargement of the Erie canal. I am also opposed to the proposition of the gentleman from Erie [Mr. Verplanck], which is the pending amendment, to strike out from this financial article of the committee, of which I have the honor to be a member, the eighteen millions which the people of all sections of this State have contributed toward the present Erie and lateral canals. The reasons for such opposition I shall state during the time I shall occupy the attention of this committee. Now, in my judgment there are only two reasons why a canal should ever be enlarged. The one is for the purpose of furnishing greater facilities when ever a period is reached that it cannot adequately fulfill the wants of commerce and trade. Another is, even if it has sufficient capacity, if the State or private corporation, who owns a canal, by enlarging it can reduce the cost of transportation of even the quantity of goods or merchandise moved over it, then it may be proper and useful to enlarge it; and those I think are the only two reasons which can ever operate in the minds of sensible men in inducing them to vote for the enlargement of a public or a private work, and it seems to me those two considerations are the only ones after all, or the fundamental ones, to which the minds of the several members of this Committee should be attracted. Now, to approach immediately the subject under consideration: Is there any immediate necessity for enlarging the Erie canal or its laterals? First, is there any want of capacity to move the goods offered to it at either terminus, and if not, then by an enlargement will we so cheapen the cost of transportation as to make it a paying investment. Now, I will say further in the preliminary remarks I am making, that if it should be established that there was a want of capacity, or that by the improvement suggested or proposed by the Committee on Canals, the cost of transportation, would be reduced, still I should

hesitate to give my vote for the scheme. That presents another question, whether it is expedient to do this under the present peculiar circumstances and condition of this country, whether it is not better to postpone it until our financial condition wears a better and a brighter aspect. Now, the first subject that I shall discuss here is whether or not the Erie canal is now really capable of transporting, when properly managed, all the goods that have been heretofore offered to it, and that seems to me a subject that can scarcely admit of any doubt. This subject of the capacity of the Erie canal, and indeed of every other canal in this country, has been discussed here to a limited extent. The principle upon which the capacity is measured is quite familiar to every gentleman here. The first testimony, as I may call it, that I will bring to the consideration of the committee, is this testimony by the engineers and those officials who have furnished us their estimates of this capacity in their reports from year to year since the enlargement. I think I am correct in saying that nine-tenths of them have determined that the practical working capacity of this canal is at least eleven millions of tons, and five and one half-millions is about the lowest, for the downward route or shipment to tide-water. This actual working capacity of the canal is estimated by these engineers, after careful examination. These reports from the officials of your State, and they, on this point, are what are called authentic reports, furnish precisely the same evidence that you would receive if you visited the locks yourselves and measured them. Having the capacity of the boat, the size of the canal, and having the time of the lockage and the tonnage of the boat, it is quite easy to determine what would be its capacity in a regular transit over it. Now, this has been done by these engineers and officials as I have stated, and a nearly uniform estimation arrived at, with one or two, and perhaps three exceptions. Now, the highest amount of goods transported in any one year to tide-water over the Erie canal was two millions, and some seven or eight hundred thousand, perhaps nine hundred thousand tons—less than three millions at all events. I shall not stop in my remarks to give them exactly. The committee have it in the documents they have on their tables. It will be perceived at once, by the committee, that only about half its actual capacity has been used; and yet we are called upon by those gentlemen, under the light of all this evidence, to vote for a further enlargement of the Erie canal. But it is said that it is not true and never was true that these estimates are correct. Well, now, I am not unwilling to admit the correctness of that position to some extent. But I do assert that the estimate of the capacity of the canal is far more accurate than the estimate made in regard to the cost of construction, and I therefore will leave that, having, however, established by these documents, the fact to be, if the engineers' estimates are to be taken as a basis upon which our judgment is to be founded, that the Erie canal has just one-half of its capacity occupied, and I am perfectly willing to go with the advocates of this proposed scheme into actual experiments and actual facts; but before I give

the examples, I desire to call the attention of this committee to the Erie canal as it has been heretofore and is now, in fact, worked. That my remarks may not be misunderstood, having claimed that its capacity, even according to actual facts, is not quite half filled by the present actual movement, I desire to say that by the introduction of a lock of two hundred and twenty feet in length instead of the double locks now in existence, twenty-four feet in width, which is the scheme of the Committee on Canals, that you cannot, in any event, increase to any considerable extent the capacity of the present canal; and in respect to the other proposition, instead of reducing, you will enhance the cost of transportation. Now, the engineers who represented to the people of this State, when the improvement was called for, the importance of double locks, I submit were entirely correct, and if we go into this new project, experience will teach the people that those engineers were correct. You have got upon this canal now—a canal of three hundred and sixty miles—only seventy-one locks, and they are double locks, except a few westward of Syracuse. The proposition is to take out these double locks and put in a single lock in the place of them. That proposition is not accompanied with a proposition to enlarge the channel way of the canal. It stands alone by itself, they claiming that they can carry through that canal cargoes of four hundred, five hundred and six hundred tons' burden without further enlarging the trunk of the canal, excepting at those points where the curves will not permit the longer boats to pass around, and I believe that is about all, and taking out the bench walls. In the actual working of the Erie canal now, a boat is capable of carrying two hundred and forty tons to tide-water. If you increase that boat how can you pass through the channel way of the canal with a cargo of five hundred or six hundred tons? I would like to know from any gentleman in this Convention if you put a cargo of six hundred tons, no matter whether the boat draws any more water or not, and start the boat from Buffalo upon either of the levels as they exist upon the canals and undertake to move it by steam, or, if you please, by horses, if you can move it at a speed of over a mile and a half an hour? I think that it cannot be done as it now exists. The illustration is too familiar. When the steamboat goes up the North river and strikes the Overslaugh she has to go creeping over the water; and if she goes at any speed whatever, she drives the water over one hundred yards from her, over the protecting walls on the shore. At a speed of a mile and a half, over the Erie canal, a boat of that dimension, carrying that cargo, would run to the bottom in less than one hundred yards, and empty your canal of water. The condition of your canal was so well illustrated by the gentleman from New York [Mr. Tilden], that I will not pursue the subject further than to say that there is a physical law preventing the boat from moving with any great rapidity through the water; and the larger your cargo, to that same extent, in a quadruple ratio, is your speed diminished and your traction increased. Well now, not to make a continued ar-

gument, because it has been discussed here so long that the committee must be tired of it, I only want to draw the attention of the committee to the subject, so that they may see what force there is in it. You have now double locks. Do you expect by a single lock to get more lockages, which is the measure of the capacity of a canal, than you do by your single lock? Nobody dreams of that. If you have your double locks all the way through this canal you have two canals side by side, and you have two boats running with two hundred and fifty ton cargoes (in theory this is not true, and in actual practice it is not, no more than it is true of a boat in actual practice upon the canal with one large lock, but the one is equally practical with the other) then you have got substantially two boats running side by side, one boat never interrupting the other; and in practice it is well known on the canals by all canal men that you never have complete timing of the boats, one coming up at the lock just at the moment the other reaches the level below. That is rarely the fact; they are separated, and therefore it is, that thousands of lockages on a canal of a single lock are wasted because at the moment a boat is locked down to the level below, there is not a boat ready to take up its position on the level above, but another boat goes down, then another lockage is wasted, and then again another. Those lockages of water can never be brought from the level below. With the double lock this can be avoided, and it was for that purpose, if I mistake not, that the double lock was urged among others because of the want of water even to do the business of the canal now being done upon it. Sir, if you introduce the experiment of the large lock, what is the result? While you lose, during the season of navigation, thousands upon thousands of lockages, you do another thing. Each of these locks contains three times and more the quantity of water that is contained now in one of the double locks. A single lock contains only 21,000 cubic feet and a fraction of water, and you never waste a lockage by a double lock, and yet the cry is, "more water." You put in your large single lock, and, even if you do not waste the lockage, you want twice as much water in it as you have now, because the single lock contains 66,000 and a fraction, and yet they propose to supply this by some reservoirs. I think their estimate of expenditure for that purpose is far below what it will be, for we have some little experience in building reservoirs in my county. Well, then, there is another thing. I will take a descending boat from Syracuse, and I will assume that you have all the water you want in the canal to lock it through, and the boats are running through with great rapidity, as they claim they will have a lockage every ten minutes, and I will bring them down to Schenectady, and start them on a level toward the Hudson where there are thirteen or fourteen locks. Now, the members of the committee understand that the plan of the Canal Committee is, that the channel way of this canal is amply and abundantly sufficient for the movement of these large boats with the single locks they propose to give it, but whether you

make the movement on small boats with your large locks the consequences will be the same; the enlargement of the lock necessitates the enlargement of the channel-way. I will, as I said before, start a boat down this canal, and I will get it into one of these locks at Schenectady. Now, it will be remembered that that canal was built just for the purpose of holding an additional 21,000 cubic feet of water. That is what the engineer made it for. A boat coming down the level above it, it locks down twelve feet on that level below. They shut the gates up above and they keep in between these gates 21,000 cubic feet of water. Now, the boat rests on the bosom of that water, and the gates are shut and the waste gates are opened below, and the water goes, where? Why, it goes into the level below, and the boat carries that 21,000 cubic feet of water all the way to the Hudson river. I do not mean to say that it does not evaporate, a part of it and leak, but it carries 21,000 feet of water with it, every lockage it goes through, and the level below was made by the engineer to hold just that additional water, and then the banks are full. Now, then, you come down with your big boat or your little boat, because a shingle takes as much water exactly as a large boat; it has to go up or down to the level of the miter-sill, and you carry into that level below 66,000 cubic feet of water, and where do the other forty odd thousand feet go to? It must go over the banks. It may be said it runs down the waste ways. It runs around through the waste ways into the canal below; there is no provision made for it running into the fields. Now, a boat goes up, and here you will find a greater difficulty. It goes up in the first level; it meets the lock, and it runs into the lock to be lifted up twelve feet, and the gate below is shut, and 66,000 feet of water are required to lift the boat to the level above, and the water thus drawn off from that level is passed to the level below, and unless you send word to the lock above to fill up the level the boat cannot proceed on its passage. This is the difficulty you will meet with in the adoption of any such system. Now, I have stated that the capacity of the Erie canal is abundantly sufficient to take a million and a half more tonnage than it now does. But if this is not true, have we any evidence, presented here anywhere, notwithstanding the flights of eloquence we have heard from members here, that is reliable that there are any more goods to be presented to this canal than the canals are capable of carrying. It is claimed here by the gentlemen who have addressed the committee on this subject, that there has been a gradual increase for the last fifteen years in the movement of goods over the Erie canal eastward, and therefore we are asked for its further enlargement. Well, now, that fact undenied has great significance. I undertake, however, to deny the fact, and I will give the statement as you will find it in document No. 87, and page 16, from which I have drawn it. The tonnage eastward over the Erie canal, from 1852 to 1860 (I will take that period because that is the period on which they have made most of their calculations), both inclusive, a period of nine years is 10,897,326

tons. That is a yearly average of 1,210,814 tons for the whole nine years. From 1861 to 1866, both inclusive, the total tonnage was 13,079,008 tons, making an average of 2,179,834 tons per year. Now, that is the total tonnage of these years, and the average total for each year; the total tonnage for the two periods and the average for each year. Now let us see what the tables say. You will mark me that the yearly average for the first nine years, from 1852 to 1860, is 1,210,000. Now let us see how they run along in the book, and we will see if there has been this gradual increase. In 1852 it was 1,151,978 tons; that is not quite the average. In 1853 it was 1,213,000; that is but little more than the average. In 1854 it was 1,100,000; that is less than the average. In 1855 it was less, 1,092,000; the average being 1,210,000. In 1856 it was 1,212,000; just about the average. In 1857 it was only 918,000 tons. In 1858 it was 1,273,000 and a fraction; just about the average. In 1859 it was 1,036,000 tons; away below the average. In 1860 it was 1,886,000 tons. Now comes the period of 1861 '62, '63, '64 '65, and '66. Now, every member of this committee has been told over and over again, but I will repeat it for the purpose of my present point here, that those were exceptional years. The war had broken out and the Erie canal was then called upon to transport more goods and she showed herself ready, and able and ample to do it. The river Mississippi was blockaded. The canal leading to the South was blocked up, and the country east of here was calling for goods, and then not the pressure upon the canal, but the pressure here, the canal being the conduit only when called upon for a larger burden upon her resources. Well, did she fail to answer the call? Not by any means. But the point I am now presenting in connection with it is, I am denying the proposition that there has been a steady yearly increase. I say any increase that has been shown here at all has been occasioned by these adventitious circumstances and not by the gradual increase of the produce of the West by any means. Now, sir, in the last six years the same fact appears that the yearly average is the same from 1860 to 1866, it is just this figure of \$2,179,000, sometimes below it and sometimes above it. Now, that fact, I submit, disposes of the question that there has been a gradual increase, and is certainly one of those questions that takes away from the argument they have used, all its point and all its force. On this question of capacity I must not pass over a fact. Leaving out the whole of the arguments and withdrawing from your minds for the moment every consideration and every impression made by reports of the various superintendents, lock-tenders and engineers, I desire to call your attention to the actual facts as they occur here in daily operation of the Delaware and Hudson canal. I have had some little experience in the navigation of that canal running from my place to Honesdale. It is a canal one hundred and eight miles long; it is not half the size of the Erie canal, and carries cargoes of one hundred and twenty tons. Its sectional area is less than half the Erie canal; the Erie canal is twice and a quarter the size of that canal. Now, I say that small canal with 108 locks on it,

which is a lock a mile, goes 1,208 feet up into the air, the locks being 14 feet lift and all single locks, and only 90 feet in length by 14 feet in width; and this Erie canal, 360 miles long, with only 71 locks and most of them double locks, and the canal being twice and a half the size, and yet that small canal has brought two millions of tons a year to the market, and this Erie canal only about two and a half millions. Now it only establishes the fact that the great difficulty lies in the management of the canals, not in the structure itself, and as it has been well said the lack of capacity lies not in the structure, but it lies in the parties who work it.

Mr. PROSSER—I would like to ask the gentleman to state to the committee the width of the bottom of that canal and the width of the boats.

Mr. HARDENBURGH—The bottom width of that canal is 28 to 30 feet, and the width of the boat is 14 feet to 14 feet 4 inches.

Mr. FOLGER—The bottom of the Erie canal is what?

Mr. HARDENBURGH—Is 52 feet, or should be.

Mr. FOLGER—And the bottom of the boat?

Mr. HARDENBURGH—I do not know. The bottom varies according to the kind of the boat, whether it is a scow or a round-bowed boat, or whatever kind of a boat it is. The bottom is never taken into account. Now, that canal, I say, with a few exceptional years, brings as much to the market as the Erie canal, and this fact cannot be answered; and its capacity has never been reached. It has got a capacity of three and a half millions, and we have had a long investigation in respect to that canal upon this precise subject with the Pennsylvania coal company. We enlarged that canal from a 50 ton boat in 1849. I do not remember now the exact sectional area of the boat, but we enlarged it from a fifty ton boat to a 120 ton boat, and we did not stop by enlarging the locks, but we also enlarged the channel-way the entire length of the canal, for we knew we could not get any more coal down or reduce the cost of transportation by simply enlarging the lock. We did that, and we were enabled to bring a much larger quantity of coal to the market. But the point in that investigation was whether we had reduced the cost of transportation by thus enlarging it, the other side denying any reduction and our side claiming that it could bring it twenty or thirty cents per ton cheaper; and after seven or eight years' investigation, and taking seven or eight volumes of testimony at some considerable expense, the result was, we succeeded in obtaining one-tenth of a cent per ton per mile in the reduction in the cost of transportation produced by that enlargement, and that sum the other side is litigating yet. In that investigation, as my friend from New York says, we examined almost every enlightened engineer on the American continent, and we swore several hundred witnesses composed of boatmen and transporters who had used or navigated that canal, and found the fact to be, strange as it may appear, with these large cargoes and with these enlarged boats and vessels, upon the enlarged canal, they could average only about nine trips per season, while on the old canal they could make fourteen trips per season.

Then, when my friend [Mr. Prosser] adds the expense of his gunboat carrying five hundred tons, which will cost him, as I understood him, \$18,000, and put it alongside the present boat on the Erie canal (although his carries double the cargo), taking in the advanced wages of the crew (it requiring a crew of greater skill), and taking in the advanced cost on the motive power, which is steam, at the cost of eight or nine dollars a ton on this canal; add up that column of expenditure, and not only that, but the enormous sum you have got to lay away annually in the character of a sinking fund to realize your \$18,000 investment at the end of six years, (for that is a fact established by all men that a boat lives but six years—that is, the natural life of a vessel upon any canal, whether it runs or lies still, is from five and a half to six years and then it becomes too expensive to run her profitably, and hence, you are compelled to lay away annually a sum to replace your investment—a sum sufficient at six per cent at the end of six years to replace your investment;) take that sum and add the expenditure for the motive power, add the expense of your additional care, add to it your insurance and the risk of the boilers blowing up, and then divide it into the additional tonnage you bring, which is only double that brought now, and then add up the comparative cost of expense of a small boat drawn by two or three horses, costing from fifty to seventy-five dollars, and the expense of a boy twelve years of age to take care of them, and divide it into the tonnage brought by the present boat, and see what the expense per ton is. That is a better and wiser way than the engineers do it. Now, again I have got these estimates made out, but they are merely estimates of mine. Coal may be cheaper and may not. But I turn again to the question of cheapening the cost of transportation, and invite the attention of the committee to the actual truth that is developed by practice, and then I take the favorite model canal, the Delaware and Raritan canal. When this subject was first presented to the Committee on Finance I was not very familiar with the actual operation and working of that canal, and took occasion to go down there and look at it, and to my utter surprise I found this to be the state of affairs. There was a canal forty-three miles long, with only ten locks upon it. The locks were the precise dimensions proposed here by the Canal Committee. It was a canal eight feet deep in 1862, and by the report I have here now, in 1866 it was nine and a half feet deep. A clear, open water-way, connecting the waters of the Delaware with the waters of the bays of the Hudson, carrying over 2,800,000 tons of cargo in a year, with all facilities to run these large boats, the canal being nine and a half feet deep, seventy feet wide at the top and fifty-four and a half feet wide on the bottom. One would suppose, with a navigation as superb as this, the large vessels would be used in preference to the small boats, and that produce could be carried cheaper in them; and yet, notwithstanding all these facilities for running large boats on that canal, carrying five hundred and six hundred tons, the actual fact is, that, as you travel from one end of it to the other, you will find that out of that

large tonnage of 2,800,000 tons carried yearly, only 48,000 tons are carried by these large boats. All that merchandise and 700,000 tons of coal brought down by the Reading railroad to Richmond and Philadelphia, breaking bulk there, is put into these small boats carrying only one hundred and fifty tons, and some of them ninety tons, and none higher than two hundred and forty. Here they have given it for nine years a trial; with the large boat, they tried it however, for only a few years. In 1862 there were a few. There are a few running now, carrying merchandise from Philadelphia to New York, and they are compelled to charge six and a half cents to take a bushel of wheat on one of their vessels when parties want it to go a little quicker across this canal to market. Now, will you close and bandage your eyes while a sister State has tried these experiments on a canal of only forty-three miles, and found the small boats the cheapest? It might be well to risk two or three millions of dollars to try the experiment, if one had not already been made; but on a canal of three hundred and sixty miles, when it has been tried right under your eyes, are you, I ask, to turn your backs to this great experience and venture into this region of speculation, especially in a period of our financial history such as the people of this country never witnessed before, and, I trust, never will again? It seems to me to be the idlest experiment that a man can make. Now, Mr. Chairman, the honest and true way to cheapen the cost of transportation is to reduce your toll, and it is for that reason, if for no other, that I object to the report of the Canal Committee. My policy, if I had to make it here, is to pay off this debt as rapidly as you can and then declare to the great North-west that that canal shall ever be a free, open communication to all the rest of the world. Let it be as free as if God himself had made it there. He made the valleys through which it comes, and through which the water flows, and the only natural way in which it can reach the sea. And those great sister States that lie back in the far West with their granaries filled desiring to come here, find fault with us that we charge a large toll on our highway, and the only answer we can give them, and the only answer you could ever give them is, that it cost the people of our State this amount of money to construct it. When that is paid we should charge nothing more than to keep, for their protection as well as ours, the channel in perfect order, and from time to time improve the channel for them as well as for us. That was the policy and is now the policy of the general government. The general government will not allow any interruption to the free inter-communication from State to State; and when in 1862 we applied to Congress for an appropriation to enlarge the Erie canal, the answer was instantly sent by the people of the North-west, and justly, too, "We will not give to the State of New York to enlarge their canal or make her an appropriation, when she seeks and insists upon charging us over that highway constantly a toll to pay even for their own State governmental expenses." Now, sir, you can, by paying up your \$21,000,000, make it free if the people at that period of time are

willing to say so. At that particular period of time you can reduce the toll and reduce it now if it becomes necessary, and at any moment of time when the period may arrive that that canal demands an enlargement, the people of this State will be ready to give the means to do it, but they must first be thoroughly convinced of it, and much more so than they are now. Then, I say, if you put such a provision as has been suggested by the gentleman from Erie [Mr. Hatch], in which you declare that the instant this debt is paid, from thenceforth and forever more we will not charge any man on earth that comes across that canal with any goods whatever, a single shilling of expense beyond what is necessary to pay for his proportional share or contribution to keep it in order. You may then announce a policy in the very instrument you send out, if it is adopted. It will forever destroy all idea of a channel anywhere around by the Welland canal or elsewhere; for capital, knowing that that is to be the future policy of New York, will never dare invest a cent in such a wild speculation. They could not, of course. This policy adopted, and this canal free, the people of this State will get what they ought to get in consequence of the providential fact that they happened to have been placed in the great pathway of commerce almost from the Rocky mountains to Europe. It is almost the only channel way, as has been well said, in which a canal of this kind could be constructed and maintained successfully; and then, if it becomes fully free, I would have it as I would have the Hudson, free—free as it was when we first planted ourselves on this soil. Then, I say, it can be clear of debt and free in eight or ten or fifteen years, and the sooner the better it will be for us to announce that policy; and that will effectually destroy all these schemes and projects that the North-west may now entertain to carry their goods to Baltimore and Philadelphia and Norfolk or to the Canadas and elsewhere to reach the civilized world. And if that period arrives we have demonstrated the capacity of the Erie canal as sufficient for the next ten years even with the ratio of increase that has been shown here. Now, I have a word to say in regard to the fluctuations. I have a table here prepared of the prices of freight on the canal and also on the lakes. Now, a singular fact occurs, and this is a tabulated statement made with great accuracy and which shows the fluctuations of prices in each month of the year from 1861 down to the year 1866 and the fluctuation in the prices of freight on the lake are actually greater than they were and have been on the Erie canal. I can see therefore that the plan of the Committee on Canals must necessarily go to the extent, if they desire to get rid of the difficulty, of enlarging Lake Erie; because to get rid of the fluctuation of the last ten years I will show the fluctuations on the lake were greater than they were on the canal. I hold in my hand here a letter from the Reading railroad company which was alluded to by the gentleman from New York [Mr. Hatch]. I shall repeat it in this connection and ought to have stated it on the subject before—a letter in which they shipped themselves, 700,000 tons of coal over this

Raritan canal and shipped all in these small boats and have done it for years past, and yet they have all the facilities that you can desire to give transporters the large boats now demanded and yet they do not use them. Now, I insist men should not shut their eyes or turn their backs to this experience of nine or ten years on a canal of greater dimensions than this committee propose to make the Erie canal. In this connection I desire to submit as part of my remarks the following tables:

1861.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Canal tolls.	Buffalo to New York.
May.....	6.3.7	5.3.3	2.7.5	4.8.3	12.8.1
June.....	6.3.1	3.3.0	2.2.5	4.8.3	10.3.8
July.....	5.2.5	3.7.3	2.2.5	4.8.3	10.5.6
August.....	3.8.1	3.9.8	2.	4.8.3	10.8.1
September.....	12.9.3	7.6.7	2.	4.8.3	14.5.0
October.....	17.2.5	10.0.5	3.5.0	4.8.3	18.3.8
November.....	14.7.5	14.2.5	4.5.0	4.8.3	23.5.8
	10.2.4	6.8.9	2.7.1	4.8.3	14.4.3

1862.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Canal tolls.	Buffalo to New York.
May.....	6.1.5	4.1.7	2.5.0	4.8.3	11.5.0
June.....	7.5.9	3.7.3	2.2.5	4.8.3	10.8.1
July.....	11.0.3	5.1.7	2.2.5	4.8.3	12.2.5
August.....	6.6.9	5.8.0	2.5.0	4.8.3	13.1.3
September.....	9.5.0	7.6.0	2.7.5	4.8.3	15.1.8
October.....	11.8.7	8.2.9	3.	4.8.3	16.1.9
November.....	14.2.5	9.4.8	3.	4.8.3	17.3.1
	10.4.9	6.3.3	2.6.1	4.8.3	13.7.6

1863.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Canal tolls.	Buffalo to New York.
May.....	7.8.3	4.8.6	3.	4.8.3	12.6.9
June.....	9.0.5	5.	2.5.0	4.8.3	12.3.3
July.....	4.9.5	5.3.6	2.5.0	4.8.3	12.6.9
August.....	4.2.5	4.6.0	2.5.0	4.8.3	11.9.3
September.....	4.7.5	4.3.5	3.	4.8.3	12.0.8
October.....	7.2.7	6.6.1	3.	4.8.3	14.4.4
November.....	7.7.5	9.7.8	3.	4.8.3	17.6.1
	6.5.6	5.7.8	2.7.9	4.8.3	13.3.9

* Estimated.

1864.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Canal tolls.	Buffalo to New York.
May.....	8.0.6	7.0.4	3.	4.8.3	14.8.7
June.....	12.5.6	3.2.2	2.5.0	4.8.3	16.3.5
July.....	9.9.9	10.1.1	2.	4.8.3	16.9.4
August.....	7.7.5	10.9.3	2.	4.8.3	16.5.1
September.....	7.5.6	9.5.5	3.	4.8.3	16.3.6
October.....	7.5.3	9.3.6	3.	4.8.3	16.1.9
November.....	12.7.5	8.5.9	3.	4.8.3	16.4.2
	8.9.4	8.9.4	2.7.8	4.8.3	16.5.5

1865.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Canal tolls.	Buffalo to New York.
May.....	6.7.5	4.9.3	3.	4.8.3	12.7.5
June.....	6.	4.6.1	2.2.5	4.8.3	11.6.9
July.....	7.9.4	5.6.1	2.	4.8.3	12.4.4
August.....	6.6.9	5.6.7	2.	4.8.3	12.5.0
September.....	10.7.5	6.3.6	2.5.0	4.8.3	13.6.9
October.....	13.8.8	11.1.7	3.2.5	4.8.3	19.2.5
November.....	11.5.0	12.0.4	3.5.0	4.8.3	20.3.7
	9.0.7	7.2.0	2.6.4	4.8.3	14.6.7

1866.

MONTH.	Chicago to Buffalo.	Buffalo to Hudson River.	River to New York.	Canal tolls.	Buffalo to New York.
May.....	11.1.9	4.3.0	2.5.0	4.8.3	11.6.3
June.....	13.6.3	7.0.4	2.5.0	4.8.3	14.3.7
July.....	9.6.3	8.0.5	2.	4.8.3	14.8.3
August.....	8.4.4	6.4.8	2.	4.8.3	13.3.1
September.....	10.3.7	7.3.0	2.5.0	4.8.3	14.6.3
October.....	15.2.5	7.5.4	2.5.0	4.8.3	14.8.7
November.....	11.7.5	9.5.5	2.	4.8.3	16.3.8
	11.4.7	7.1.8	2.2.9	4.8.3	14.3.0

Mr. GRANT—Mr. Chairman, in determining the questions that are presented by these two conflicting reports of the Canal and Finance Committees, the Convention have four leading objects to accomplish: First, the full development of the resources of the State; second, the procurement of the greatest share of the commerce of the world which may be secured by a fair and manly effort; third, the preservation of a sound financial policy which shall preserve and secure the undoubted solvency, credit, and faith of the State; fourth, a fair, equitable and just distribution of the burdens and the blessings of the government among all the different departments of industry,

branches of trade and sections of the State, preserving our relations to the sister States as well as our obligations and allegiance to the general government. Sir, I am in favor of improvement and any necessary enlargement of the canals; but I propose that that enlargement shall be at the times and to the extent only that shall be required to keep the capacity of the canal equal to the demands of trade, in the commerce of the East and of the West. I am in favor of such improvement and enlargement as shall become necessary to secure to the State her fair and just proportion of the trade that shall come from the Atlantic ocean—that great highway of commerce upon the East—and which shall be tendered to her by the millions of producers and unbounded sources of trade that are in the great North west. The necessity of improvement and enlargement to be ascertained by the Legislature, and when determined necessary by the Legislature to be provided by law under power given by the Constitution; but, sir, I would withhold from the Legislature the power to create any further indebtedness for canal enlargement unless its creation shall be authorized by a vote of the people of the State taken directly upon the question. I am also in favor of reforming the management of these canals; because, sir, I am satisfied from the evidence that has been placed before us, taken by the Senate Committee and by the statements of gentlemen upon this floor, that in the management of these canals a vast amount of corruption exists. I am satisfied from this evidence that great and stupendous frauds are practiced against the State. I would reform this management; I would break up these canal rings and scatter them to the four winds of heaven. I would disperse this army of stragglers and camp-followers and canal thieves that hang upon the skirts of the Erie and the lateral canals, and who have grown rich and are puffed up in the wealth they have drawn from the State through these great arteries of trade. I would place these canals under the management of a superintendent appointed by the Governor of the State, with the advice and consent of the Senate, for a term of years and subject to removal for neglect of duty or any other of the causes stated in the report of the Canal Committee. When we shall have done this, when we shall have secured, in the conduct and management of these canals, that care, that enterprise, that faithfulness which characterizes the conduct of the Delaware and Hudson canal, which characterizes the conduct of the Delaware and Raritan canal, which characterizes the conduct of our railroad corporations in the management of their property and their business, we shall have accomplished a great part toward rendering our canals efficient and productive. I cannot agree with the report of the Canal Committee in its proposition to appropriate at this time \$8,000,000 for canal enlargement. I am not convinced that immediate enlargement is necessary. I disagree with the report of the Finance Committee so far as it opposes entirely the enlargement of the canals. I also disagree with the report of the Finance Committee because it undertakes to limit and tie up and direct the expenditure of the revenues of the canal and the finances of the State for twenty

years. I also disagree with the report of the Finance Committee wherein it overstates the indebtedness of the State. I disagree with the report of the Finance Committee wherein it proposes a new line of policy by which the power and the property of this State shall never be used to aid in any private enterprises, nor in aid of any association or corporation when engaged in a great or beneficent work for the public good, and whereby that committee seek to deprive the Legislature of this State, for all future time, of the power and the right to grant aid in any railroad enterprise or any other work of internal improvement, or to make any donation for any charitable or meritorious and beneficent purpose, by the eleventh section of their report. I must oppose this section most strenuously in every stage of the action of this Convention where I shall have the opportunity to meet it. Why do we propose this great change in the policy of this State? Who demands this change of policy? Has there been any petition presented to this Convention from any great mass of the people asking that you shall declare it a part of the fundamental law that no railroad enterprise, that no private canal enterprise, that no association for public charity, that none of the great objects of general welfare and public good that have received donations from the State of New York for the last half century shall ever receive any aid or assistance from it in future? I think not in a single instance. Whence comes this disposition to make a miser of this rich State? Whence comes this disposition to tie up and hamper the Legislature, to withhold from it a power that has never, as far as I am aware, with one single exception, been withdrawn from the legislative branch of any government on the earth, to prevent the people through their legislative agents from recognizing an object of charity or of public enterprise; that determining in advance that, for all future time, the State shall give nothing for the benefit of any charitable institution, nothing for the benefit of any feeble railroad enterprise, however necessary and however important and however profitable to the State in developing its resources or retaining the commerce of the State? Whence comes this disposition that has manifested itself in this Convention? I hope that, before we adopt this section, gentlemen upon this floor will recollect that there are other sections of this State than those along the line of the Erie canal, or than those along the line of the Central railroad or those along the line of the Erie railroad that have been taxed and have been compelled to divide their hard earned dollars in raising the millions used to construct the Erie canal, first called the "Clinton ditch." It was the sequestered portions of this State as well as the enriched portions that helped to contribute the money by taxation, when hundreds of thousands of dollars were loaned by the State to the lines now composing the New York Central railroad, when that great enterprise was but a project, to enable them to become a reality. It was those sections of the State upon which contributions were levied to pay the three millions of dollars that were given to the Erie railroad. It was those sections that bore their share of the taxation to raise the money that was ap-

propriated in and by some sixty or seventy acts of the Legislature, that are to be found upon the statute books, for local objects of individual and public enterprise in the various parts of this State. Before there has been any just distribution of State donations, before these debts that are held by sequestered and long neglected portions of the State are paid, we are met by a proposition from the Finance Committee and by a proposition from the Committee on the Powers and Duties of the Legislature to change this whole policy and determine for the rich and favored sections against the people of the sequestered regions, of these inland portions of the State, that have never yet been benefited either by railroad or by canal, that that whole policy was wrong; and although these favored and enriched sections may have had the benefit of their money that has been drawn from them by taxation, and have grown rich by donations and loans of this money for improvement and development of their favored sections and have not been asked to divide or repay—yet this policy was wrong and we will adopt another rule by which there shall be no State division, repayment, borrowing or lending, but a policy adopted by which the rich shall grow richer and the poor poorer. Sir, the State of New York has not grown so poor, nor become so embarrassed as to make this change necessary. Sir, I can not agree with the report of the Finance Committee, nor with those who support it, in their statements of the indebtedness of this State, nor in the arguments drawn from these statements. The pictures of indebtedness that have been drawn by the members of the Finance Committee, and by those who have supported the report of that committee, are overdrawn and too dark, when they undertake to picture to us the people of the State of New York groaning under the burdens of taxation, asserting that the indebtedness of the State is \$633,000,000, while the entire property of the State is but \$1,600,000,000. I say that these pictures are overdrawn and too dark, and are not supported by the facts. Suppose we take their statements of the debts. Call the actual State debt \$48,000,000, if you please, in round numbers. The assessed valuation of the property of the State in round numbers \$1,600,000,000. The assessed valuation of the property of the State is no more than one-fifth of the actual value. In the city of New York, the real estate of the city is worth nearly three times its assessed value. In rural districts of this State, it is worth more than three times its assessed value. Taking the average throughout the State it will be found that, before the rise in prices of land, consequent upon increase in currency, the real estate of New York was worth three times its assessed value; and since the war, since the increase of prices resulting from the inflation of the currency, the real estate of the State is worth more than three times its assessed value. But when we come to personal property, we have not assessed in the city of New York near one-tenth of that property. The assessments on the rolls of New York city have never reached one-tenth of the personal property of the city of New York which by law is subject to taxation; and in other parts of the State, it has reached little more than one-tenth of it; as experience, ex-

periment and investigation, will prove to the satisfaction of any man. Then I say that the real value of the property of the State, including real and personal subject to taxation, is five times its assessed value, without including the great amount of government securities exempt from taxation. Five times \$1,600,000,000 gives us the real value of the property of the State which is more than \$8,000,000,000. Now the only real debt of the State, which is a State debt, according to the figures of the Finance Committee, is \$48,000,000, or one dollar to \$170 of the property of the people of the State subject to its payment. Add to this, if you please, \$35,000,000 the Finance Committee claim cities, towns, and villages, and counties owe, and which the committee say should be regarded as a portion of the debt of the State, and we have \$133,000,000 of indebtedness. This is not really a State debt, but all except \$48,000,000, according to their authority, is the debt of towns, and villages, and cities. The town in which I have my residence has no debt whatever, and there are dozens and scores of towns, counties and villages in this State which have no indebtedness. But call that a part of the State indebtedness, if you please, for the sake of argument, and then we have only one dollar of indebtedness to sixty dollars of property. Again, let us go a little further with the Finance Committee, and call \$500,000,000 our share of the national debt, and charge that to the indebtedness of the State. Then we have an indebtedness of one dollar only to twelve dollars worth of property, which is liable by law for its payment. But the national indebtedness is not to be paid by the State of New York, by any mode of taxation, either by direct taxation, or by appropriation from the revenues of the State. Already the National government has paid the interest and about one-tenth part of this national indebtedness, while yet incurring many of the expenses of war. It has paid about one-tenth of it, besides the interest that has accrued on that debt during the short period since the close of the war, while ten States are yet unproductive in sources of revenue, and to a great extent, subjecting the government to expense of military rule. It is not a fair nor legitimate charge of indebtedness, to charge the remainder of that national debt, or any part of it, to the State of New York, as a State indebtedness. But take that greater amount, and if the State of New York is charged with it, then her indebtedness is only one dollar to twelve of the value of her property. Is the State insolvent? Is the State too poor to improve or enlarge her canals, if such improvement or enlargement is necessary; too poor to aid in the construction of a railroad, if by so doing she may develop great resources that belong to her, and when she is to be greatly enriched thereby, and the people of the State are to be greatly benefited by it as a matter of general good and general welfare? I think not, sir. If a merchant has a debt of one-twelfth the value of his store of goods, can we regard him as too poor to improve his storehouse, or to extend his trade? If a farmer whose property is worth \$12,000 has a debt of \$1,000 is he too poor to improve the fields of that farm? Is he too poor to under-

drain, too poor to fence, too poor to erect necessary outbuildings to husband his productions? I think that proposition would not be argued by any gentleman in this Convention, upon principles of sound economy. It was argued by the gentleman from Ulster [Mr. Hardenburgh] that we can expect little if any increase of trade from the West. Sir, when we realize the size and magnitude of the West, I think we shall be compelled to a different conclusion. We have in our North-west and British possessions more than 300,000 square miles of territory—whose drainage passes into the lakes and down the St. Lawrence. On the head waters of the Mississippi, and in the region of territory drained by that great river, we have very nearly a like amount, making more than 600,000 square miles of fertile soil inhabited by over ten millions of human beings, actually engaged in the great work of agriculture. From the statistics that have come before this Convention it appears that the increase of the grain crop in that great North-west, the present year, over that of last year, is sixty-six millions of bushels. Are we to say, in the face of that fact, that there is to be no increase of tonnage upon the railroads and canals; and especially when we realize, in connection with that fact, that the resources of this great North-west are not more than one-tenth of them yet developed? When that enormous tonnage passes over our canals and our railroads; and when we remember that there are still in the North-west millions upon millions of acres of land the virginity of whose soil the plowshare has not yet broken, millions upon millions of acres which are within the next few generations to be developed, and which are to supply a commerce ten times as great as at the present time, to produce and forward ten times their present amount of grain and animals for the eastern market. Sir, we should also remember that we live in an age of rapid progress, enterprise and improvement. We should remember that in the present year 170,000 emigrants have landed upon the wharves of New York, the greater portion of whom at once embarked for the great West. We should remember that we live in an age of railroad cars; an age of steamboats. We live in an age when the printing press is driven by steam; when the saw-mill, the cotton-mill, the woollen-mill, and the grain-mill are driven by steam and by water, and that a Rip Van Winkle may waken from a sleep of much less than twenty years, and with astonishment behold the steam plow, the steam reaper and thresher, and the steam wagon, relieving man and beast from their toil in cultivating the earth, gathering and marketing the harvest on the broad prairies of the West; that we live in an age when all these improvements are combining together with these mighty natural resources of the West in the hands of its millions of active, enterprising people, whose numbers are rapidly swelling with this powerful influx of emigration from every part of the earth, to render this great North-west rich and powerful, and to greatly increase the commerce that is to pass through this State—or find other routes of egress to the sea. We should not be narrow-minded nor short-sighted as to a necessity that may arise to enlarge these canals.

We should retain the right in the Constitution to manfully contend with other routes for this commerce, and when necessary for this purpose or to develop our own resources, or to secure our own prosperity by aid and encouragement to corporations, we should have the right to make donations to railroads. In the policy we adopt we should not enable the canal system to form a monopoly in trade, nor enable any railroad to combine its strength with the canal, nor to combine with competing roads against the canal to form a monopoly in transportation; but we should adopt a policy that will encourage competition, lessen the cost of transportation, and thereby cheapen the price of the necessities of life, which is the public good to the rich and poor, the high and the low, a policy that will enable all portions of this State, and all lines of communication, whether old or new, rich or poor, to stand alike, and enjoy and bear alike the blessings as well as the burdens of our State government, for, sir, the preservation and protection of this equality is the true object and great end of republican institutions. Sir, it is a fact that other States and other cities than ours are contending for the trade that passes over the Erie canal, and we should not close our eyes to the situation. The great trade of the North-west, so much of it as comes from the basin of the Mississippi, tends naturally to drift down with its waters to New Orleans: and New Orleans to-day contends with us for this trade. New Orleans, with a warmer climate, with her seaport that is open to the navigation of the world at every season of the year, is advantageously situated to contend with us for the trade of the valley of the Mississippi. But New York has some advantages over her. New York is more healthy, and if she can divert the trade of the North-west through our State, she has the water-power and the ability to manufacture that grain into flour. The people of Norfolk, the James river, and the State of Virginia, with their routes through the Alleghanies, will yet contend with us for the trade of the West. Our ability to retain that trade exceeds theirs of the route by the James river and the Alleghanies, because we have a better grade for our canal. But let New York lie down, like the dog in the manger, and say to the North-west, we will neither enlarge our canals nor increase the number of our railroads, the means of communication by which the commerce of your great territory can find its way to the sea, and we shall find this same great army of stalwart men in the North-west, who proclaimed during the rebellion that their navigation of the Mississippi should not be cut off, who went with the armies of the North down the Mississippi and beat down the embattlements of the enemy, and who cut their way to the sea, cleaving the Confederacy in twain—we shall find that same great army of men cleaving a canal through the Alleghanies to the James river, to find there a port of exit. Baltimore, with her Baltimore and Ohio railroad, that has cost a very large proportion of her entire value, is contending for the trade of the West. Philadelphia, with her Pennsylvania Central, is contending for the trade of the West. Boston intends to contend for the trade of the West; and she presents an indication of that intention by appropriating

the large amounts of money she is expending to tunnel the Hoosick mountain, by which she seeks to make a cut through four and a half miles of solid rock, at an expense of four or five millions of dollars, that she may gain a few miles in distance by that route to the Hudson, intending to tap our western trade on our own soil. Go a little further north, and we shall find that Portland is as near the mouth of the Ottawa river, where it enters the St. Lawrence, as is Albany to Buffalo. She, too, has an eye upon this western trade. So, sir, it behoves the State of New York to be cautious how she delays railroad enterprise and canal improvement, because we are not to close our eyes to the fact that New York already flags on the great matter of the construction of railroads. In 1850 we had more miles of railroad than any other State in the Union. Now Pennsylvania excels her in the number of miles of railroad; now Ohio excels her in the number of miles of railroad; now Illinois excels her in the number of miles of railroad. You will see, therefore, that since 1850 she has fallen from the first to the fourth place in the matter of railroad enterprise and railroad progress. But we should return to a policy that will enable us to recover the ground we have lost in railroad enterprise, that will secure retrenchment, and, curtailing many useless expenses, if possible, keep these canals up to the requirements of trade, because they are to us a source of revenue, of wealth, and of pride. The canals of the State of New York are to-day worth nearly one hundred millions of dollars; and according to any just estimate their cost to the State, beyond the amounts that they have repaid, cannot be estimated at more than twenty-five millions. These canals are ever to retain the heavier and more bulky portions of trade. The heavy timber from the forests of Canada and the forests of northern Michigan that is to be brought to the eastern coast for the purpose of building ships, wharves and cities, must ever come to the East upon the canals. Heavy burdens of lumber that do not require rapid transportation must ever come to the sea-board on the canals by reason of large amounts saved in freights and of the ability to manage them more easily upon the canals; while other articles of commerce of a perishable nature, such as the fresh meats, live animals, and green fruits raised in the West, will ever seek more rapid means of communication by rail. The heavier, bulky and durable articles must invariably seek the canals, while passengers, and the more perishable property, requiring rapid transportation, will go by the railroads. While the Finance Committee of this Convention propose to withdraw all future aid to railroads and railroad enterprises in this State, what do we see other countries about us doing to aid and encourage railroad enterprises. The State of Massachusetts, as I have already stated, is cutting the Hoosick tunnel to shorten the distance from the Hudson a few miles, at an expense of four or five millions of dollars. So the governments of France and Italy are at this time cutting a tunnel in the Alps, seven and one-half miles long, through the solid rock, at a cost of thirty millions of dol-

lars. The government of the United States, overwhelmed, as some claim on this floor, by debt and taxes arising from the war, is not too poor to aid the Pacific railroad with \$50,000,000 of bonds and by donations of land. With these examples of public spirit and enterprise, are we to change the policy of the State of New York, and decide that we will denote no more money to such noble enterprises or such worthy purposes? I hope not. A railroad is a great source of improvement. It is not, as has been argued here, a matter of private enterprise merely, which is not therefore, a legitimate subject for the bounty of the State. Whether a railroad is owned by individuals or corporations, it does not change the rule of the obligation of the State to extend its hand and aid it if necessary. When it is necessary to build a public wagon road or highway, a town may be taxed \$5,000 to build that carriage road, and the money may be taken even from the widow and the orphan. And does not the same rule apply to a railroad, that it is necessary? Are we to determine in this Convention that the people of this State are not to be trusted with the investment of their own money in a railroad, or in any other matter of public concern, public enterprise, or public utility? I think not. Guard against fraud, against corruption, against all the evils of hasty and profligate legislation, but never can I maintain the proposition that, as a part of the fundamental law of the State that the investment of the money of the State in a great public thoroughfare, where it is necessary to develop great national resources, resulting in enriching the State or in benefiting a great mass of the people of the State, while it will aid in giving our State the commerce and the untold blessings of the products and the manufactures of the East and the West, brought together at cheapened prices, for the purpose of exchange in our own borders, paying willing tribute to our people and our government, is not among the legitimate powers of the Legislature, and among the highest and best objects of our government. It has been contended that the investment of money raised by tax, or the investment or donation of money belonging to the State, for railroad purposes, was making an appropriation for individual benefit and individual enterprise, and was not a legitimate subject of taxation or appropriation under our government. I deny this proposition, and I call the attention of the Convention to the following authorities collected by Senator Ramsey—that indefatigable friend of internal improvement who merits the mantle of Clinton—and which were by him presented to the New York Senate upon the question of the propriety of granting State aid to railroad enterprises. Governor Seward, in his very able opinion on the New York and Erie railroad bill, says:

"Railroads, though of modern invention and peculiar form, are yet roads, and public roads; and though the State may wisely or unwisely, grant peculiar benefits resulting from such roads to artificial or natural persons, upon considerations adequate or inadequate, the public welfare is still the object of their construction. The capitol at Albany is more local in its design, and scarcely less public, than a railroad stretching

from tide-water to the inland seas. I am of the opinion, therefore, whatever may be the wisdom of the appropriations, the bill does not propose to devote the public moneys to local or private purposes. The principal here involved is too well established in our legislation and in our judicial proceedings to need argument or authority."

In the *Assembly Journal* of 1851, vol. 1, p. 743 to 748, will be found another very able and elaborate opinion of Lieutenant-Governor Raymond, then speaker of the Assembly, upon this same provision of the Constitution, deciding a bill releasing the surplus waters of the Erie canal, the property of the State, to the "Sodus Canal Company," a private corporation, to be a *majority* bill; and after citing a large number of legislative and judicial precedents, uses the following language (p. 747):

"The same principle has been held by the courts of every State in the Union. In fact, every seizure of private property for the construction of a railroad, involves the principle that, although railroads are constructed and owned by private corporations, and although the entire revenue from them goes into private hands, are, nevertheless, not made for a *private* purpose; for, if they were, private property could not, under the Constitution of the United States, be seized and appropriated for them. Every public railroad, therefore, is regarded by the Legislature, and by the courts of all the States, and by the Constitution and supreme court of the United States, as a public work."

In the case of *Beekman v. Saratoga and Schenectady Railroad Company* (3 Paige, 74) it was held by Chancellor Walworth:

"That the construction of a railroad is a public benefit, and that the Legislature may grant power to take private property for all improvements, whereby the public benefit is to be promoted, whether such improvement is to be effected by the agents of the government, or through the medium of corporate bodies, or of individual enterprise."

A similar decision was made by the supreme court in the case of *Bloodgood v. Mohawk and Hudson Railroad Company* (14 Wend., 57), in which Justice Sutherland uses this emphatic language:

"Railroads, though made by private corporations, when designed for traveling and transportation, are great public improvements. They can be made profitable to the proprietors only by affording the most liberal accommodations to the public. They are, from their very nature, devoted, and exclusively devoted, to the *public* use."

In the case of *Conklin v. Baldwin* (4 Wend, 670), in which the late Governor Marcy, then a judge of the supreme court, wrote the opinion of the court in support of the same principle. He says:

"The execution of a public work may as well be committed to an individual or a company, as to public agents; its character as a *public* work remains the same."

In the case above cited (14 Wend., 51), the court says:

"That the taking of private property for the use of a railroad company, is taking it for *public* use, within the meaning of the Constitution, and that such corporations are *public* and not private corporations."

That taxation for *public* purposes, and taking private property for the same purpose, by right of *eminent domain*, rests substantially on the same foundation, has been distinctly settled by the court of appeals, in *The People v. Mayor, etc., of Brooklyn* (4 Comst., 422). I quote from the opinion of Judge Ruggles, which was concurred in by the other members of the court:

"Private property may be constitutionally taken for *public* use in two modes, that is to say: by *taxation*, and by right of *eminent domain*. These are rights which the people collectively retain over the property of individuals to resume such portions of it as may be necessary for *public* use."

"The right of *taxation* and the right of *eminent domain* rest substantially on the same foundation. Compensation is made, when private property is taken in either way. Money is property. Taxation takes it for *public* use; and the tax payer receives, or is supposed to receive, his just compensation in the protection which government affords to his life, liberty and property, and in the increase of the value of his possessions by the use to which the government applies the money raised by the tax. When private property is taken by right of *eminent domain*, special compensation is made for the reason hereafter stated."

The principal here laid down has been expressly applied to a railroad corporation, in a recent case in the court of appeals (*Bank of Rome v. Village of Rome*, 18 N. Y. R., 43), in which the court decided that taxation for the building of a railroad was not for a private or local purpose, but for a public purpose, and that the Legislature had the power to authorize a tax to be levied for such purpose, upon the taxable property of the whole State, or a particular locality.

The court of appeals have also decided, in *County of Guilford v. Supervisors of Chenango County* (3 Kern., 149, see Judge Denio's opinion):

"The Legislature is not confined in its appropriation of the public moneys, or of the sums to be raised by taxation in favor of individuals, to cases in which a legal demand exists against the State. It can thus recognize claims founded in equity and justice, in the largest sense of these terms, or in gratitude or charity. Independently of express constitutional restrictions, it can make appropriations of money whenever the public well-being requires or will be promoted by it, and it is the judge of what is for the public good. It can, moreover, under the power to levy taxes, apportion the public burdens among all the tax-paying citizens of the State, or among those of a particular section or political division."

In the case of *Sharpless v. Mayor of Philadelphia* (reported in 21 Penn. R., 149), the same question was decided, and the court, in giving its opinion, says:

"Railroads are not *private* affairs. They are *public* improvements, and it is the right and duty of the State to advance the commerce and pro-

note the welfare of the people, by making or causing them to be made at the public expense.

"If the State declines to make a desirable public improvement, she may permit it to be done by a company, and the fact that it is done by a corporation does not take away its character as a public work.

"The right of the company, by which it is made, to be compensated for the expense of constructing it by taking tolls for its use, though it gives the corporation an interest in it, does not extinguish the interest of the public, nor make the work a *private one*, because, to say nothing of other advantages, the public can pay the toll, and still carry and travel on it very much cheaper than without it.

"The State may, therefore, rightfully aid in the execution of such public works by delegating to the corporation the right of eminent domain, as she always does, or by an exertion of the taxing power as she has done very often."

The supreme court of the State of New York, the court of appeals of the State of New York, the supreme court of the State of Pennsylvania, and the Supreme Court of the United States, all concur in their solemn judgments that taking private property for the benefit of railroad corporations, and taxing the people of the town, of the county, or of the State, for that purpose, is among the legitimate objects of the government, and are to be sustained both upon principle and by authority. We have raised vast amounts of money in the State of New York by taxation, and appropriated it to the building of the Erie canal and matters of railroad enterprise. We gave three millions of dollars to the Erie railroad. By so doing we increased the taxable property of the State a hundred millions. We thereby developed the resources of the southern tier of counties, increased their population, increased their wealth, and increased the various sources of revenue of the State. We aided the railroads constituting what is now known as the Central railroad, to construct their lines of railroad, by loaning them several hundred thousand dollars, and the building of that continuous line increased the taxable property of the State nearly a hundred millions, besides building up and enriching the whole section of country along the line of this railroad. When the State appropriated a hundred thousand dollars to drain the Cayuga swamps we increased the value of the property in that section subject to taxation for the support of the State government and the revenue of the State from that source. There are more than fifty similar cases, from 1790 to 1856, where acts have been passed raising money by tax upon the people of every portion of the State, and appropriating it for the purposes of local improvement. Those benefited and those injured by these great thoroughfares have been taxed alike to pay their proportion. Is it honest, is it just, is it fair, that you should now reverse this great policy of the State, and determine that it shall donate no more of the money of the State to railroad enterprises? By turning to our statute-books we shall find that the Legislature has appropriated the money of the State for twelve different lines of railroad, and we have appropriated the funds of the State for improvement of highways, bridges and rivers, and for

other local purposes, the appropriations running from a few thousand dollars up to three or four hundred thousand dollars, and in one case to three millions. When we have done this so frequently and during so great a period, always for the richer sections, and by taxation which always bears more heavily upon the poorer sections, can we turn round and close this policy, and say, with the Finance Committee and those who support that policy, that we have just now discovered that this is all wrong, that it is time for the State to close this system of donations. Will not this be great injustice to the interior portion of the State? Sir, the injustice is manifest. The county of Delaware, which I undertake in part to represent in this Convention, has paid, in her taxes for these local appropriations, including the interest upon those taxes, more than \$250,000. Otsego county has paid more than \$300,000, Chenango county more than \$200,000, and together with Schoharie these sections of the State have paid, including interest, more than a million of dollars into the State treasury for the benefit of local enterprises located in other sections of the State. And if we are to close the door and bar it against further appropriations of this kind, before we inaugurate this new policy attempted to be forced upon us by these favored and enriched sections, they should first return to us those hard-earned dollars that have been drawn from us by taxation and invested for them, and which have produced their wealth and prosperity. The State should, by every dictate of honor and justice, require repayment to these interior counties and the other counties of the State that have in the same manner been taxed so largely to raise these amounts of money, all expended for the rich and powerful sections of the State, before allowing this change of policy. Sir, the policy under which there was drawn from the people these millions for the Erie railroad company to enable that corporation to build that great thoroughfare, and under which so many large appropriations, benefiting sections only in every instance, have been made, should not be ignored until justice is done by repayment or by equal appropriations to the different sections of the State for which I speak. Sir, they are poor, and yet they have their railroad projects and enterprises, thoroughfares to connect them with the center of the State, the commerce of the East and trade of the West. Return to them the money they have paid toward the Erie canal alone, and they could build their own railroads. I feel an interest in these neglected portions of the State. When Clinton called for aid from the people from every portion of the State, and it was necessary to inaugurate that great policy which has resulted in the construction of the Erie canal, that aid was only secured by the most solemn promises made to members of the Legislature from every portion of the State, that at the proper time that money should be refunded by like appropriations to their sections, and a fair and equitable distribution of the burdens and blessings of their great system of internal improvement. When the friends of the several lines which now constitute the Central railroad desired large sums of

money to aid in their work, and enable them to build their several portions of that railroad, these loans were effected by the most solemn promises made by their friends to the members of the Legislature from the portions of the State for whom I now speak, that they in turn should be repaid by the aid of this State to assist in enterprises of internal improvement in their sections. And when the friends of the Erie railroad desired aid to the amount of three millions of dollars, the most solemn promises were again made to the friends of these long neglected sections that the taxes drawn from their products, those hard earned dollars, accumulated under most discouraging circumstances, should be repaid to them when the proper opportunity should present for the State in like manner to assist them. Now gentlemen say they have discovered that this policy of aiding the sections of the State in developing their resources, and in their works of public enterprise, public improvement, which are for the public good, resting in the good faith of the people and the strongest obligations, has ever been all wrong, and should be discontinued. Why did not they discover the error of this policy while they were growing rich and we remaining poor under it. I take the ground that the policy of the government of the State should be to look to all parts of the State, and that the blessings and burdens of the government should bear alike upon every part, maintaining the good faith and enforcing the obligations of the State and of every section of it without distinction or favor. I feel a great interest in the portion of the State that is west of the Catskills, now struggling for thoroughfares of exit to the Hudson on the east and the great lakes on the north and west, that it too may enjoy its share of the benefits of the manufactures and of the commerce of the world. I feel an interest in that section, because it has struggled manfully to discharge all its duties and obligations to the State and the general government, both in war and in peace; and while I express this deep interest for these sections, yet sir, I love the whole State of New York. I love her for her code of Laws, I love her for her broad domain of varied and fertile soil, for her mountains and her forests, for her broad lakes and noble rivers, for the enterprise and improvement that is exhibited in its favored sections—fostered by a liberal State policy. But dearer to me than any other sections of this State are those meritorious but long neglected portions among which are the upper valleys of the Delaware now struggling for an outlet to the great commercial emporium. This section is dear to me as the land of my birth and of the associations of my life, as the home of a people to whose confidence and generosity I owe my seat in this Convention and whose rights and interests it is my pleasure as well as my duty to defend, a section that has long borne its share of taxation without a murmur but has not been the recipient of any equal share of the vast bounties of the State. I love this section because it is there, sir, though sequestered and shut out from the benefits of the great thoroughfares of commerce, and advantages that are enjoyed by other sections, and deprived of many of the favors and benefits of the govern-

ment, we find families, parting with the last cow, the last dollar, the father and the only son in furnishing its full quotas to maintain the dignity, honor and patriotism of this State in the struggle for national life. This section, sir, is dear to me because it is there that I daily meet in the business of life the broken forms of the living and the widows and orphans of the dead who were so freely sacrificed in sustaining the great and lamented Lincoln to fulfill the oath that he had recorded in heaven and which is written above yonder canopy. "To preserve, protect and defend this government." But dearer to this people, whom I represent are the Constitutions of '77, of '21, and '46 as they now constitute our fundamental law with debts of honor against the State that have accumulated under their provisions, in the creation of which the hundreds of thousands of dollars of their hard earnings have been drawn from them by taxation for loans, and donations to the favored sections, and only consented to under the most solemn promises from legislators of these favored sections of return and repayment when opportunity should present, all of which these halls must bear witness, promises accepted on a great, established and settled policy of public enterprise and improvement, which make these advancements and donations debts of honor from the State to the sections for which I plead, sacred in confidence and binding in justice, and as I said, dearer to them than any work of this Convention which shall contain the last clause of this eleventh section of the finance report, providing "that neither the credit, money, or property of the State shall, in any manner, be given or loaned to or in aid of any individual, association or corporation," which violates their plighted faith, and repudiates these debts of honor. Sir, this eleventh section of the finance report does not stop here—read it again: "Neither the credit, money nor property of the State shall in any manner be given or loaned to or in aid of any individual, association or corporation," closing forever the door against the right of the people through their chosen Legislatures to control their money and property, to donate from the treasury of the State (however rich and powerful she may become), to aid an association whose heaven-born mission may be to feed and clothe the starving widow and her helpless infant child, or whose object may be to assuage and relieve those who may have been stricken with helplessness, sorrow and want, perchance in the service of the commonwealth, or in aid of an enterprise, however meritorious, however beneficial to the State or its citizens. Sir, let us not be in haste to change this policy under which this State has grown in commerce, enterprise, improvement and population from the fourth to the first in the Union, and under which I believe all sections have abiding faith, deep interest, and bright hopes in the future. Let us continue the foundation of our State government broad in justice and deep in honor, striving to retain her high position among the States and territories of the National Union, bound together by the silken cords of affection and friendship, bound together by the great relations and arteries of trade, bound together by bars of iron and steel, extending from the Atlantic to the

Pacific. One great national family composed of countless millions of freemen, but not a single slave. New York, the fairest and noblest daughter of that family, with her green fields and her golden harvests, with her mountain haunts and her healing springs, with her twelve thousand common schools, with her steamboats and her steam-engines, with her telegraphs, sending human errands from city to city, and from house to house on the wings of lightning, and, sir, with her rail-roads and her canals among the brightest and richest of her jewels, cultivating enterprise, improvement, intelligence, religion, and the kindly virtues of life; laboring with that purest and noblest of christian virtues which seeks the elevation of herself and all the other sisters, loved and admired by all; and then, sir, we will exhibit to the world some of the achievements of a true republican government; and then, sir, we shall behold the mighty increasing tide of emigration pouring its countless thousands upon our shores, each pleading for admission into this great family, each imploring the privilege to exclaim, "I am an American citizen of the Empire State."

Mr. BEALS — Mr. Chairman, my object in claiming the attention of the committee at this time upon the very important subject now under consideration, is that I wish in brief to mention a few of the ideas, which will influence the votes that I may give from time to time upon questions pertaining to the canals and finances of the State. The silence which I have maintained heretofore, during this discussion, I should prefer to maintain at this time, if I felt that I could do so with propriety to my own convictions of duty. If my reputation upon the one hand as an individual, or the idea of enlightening this honorable body, were the only stimulants to call a public expression from me at this time, I feel that the call would be feeble in the one sense, and preposterous in the other, and would as a whole receive my quiet vote in the negative. When I remember my inexperience and know that I am associated with eminent jurists and journalists, with professional orators and gentlemen who are clothed with the elements of profound statesmanship as with a garment, the idea that the light of my feeble efforts should add in the least, or even be discerned amid the broad sunlight of the intellectual constellations which surround me, would be too absurd to be entertained, even by my most generous friends. Then, Mr. Chairman, while I nominally address this honorable committee, through the Chair, I do so not for the purpose of enlightening the committee, but with the hope of being enlightened by the committee, if the views which I may express shall prove to be incorrect in statement or unsound in theory. Gentlemen upon this floor may court the muses for inspiration and converse with ancient and modern oratory for forms of expression, and thus inspired, beside being equipped in their own long tried armor of experience and successful logic, they may eulogize the greatness, the glory, the grandeur and the prosperity of the past history of our State, and may point to our canals, and say there is the

talismanic power which has quickened into life much of the wealth and power of which the Empire State may to-day so justly boast, and with all the fervency of my feeble nature I will respond, amen. Gentlemen who have traversed that portion of Herkimer county which is crossed by the Mohawk valley and have seen the thriving villages which almost join hands along or near the Erie canal, or who may have been so fortunate as to have visited the agricultural towns which form the background of the same, will readily understand that my neighbors as well as myself have abundant reasons for favoring that policy which shall best promote the permanent prosperity of the canal system of the State. Mr. Chairman, as at present informed, I cannot agree entirely with either the report of the Committee on Canals or the report of the Committee on Finance so far as the improvement of the canals is concerned. I shall not enter into statistics or details to a great extent, for the reason that to do so would be a mere repetition of much that has been already presented to the committee. I shall content myself by simply stating my position, with a very few reasons. I oppose the policy of the Canal Committee in regard to its proposed enlargement of a single tier of locks because I believe, from the result of years of observation and from the evidence of the best authority in the State, that the Erie canal, when in good order and under proper management, has abundant capacity for all present or immediately prospective demands for transportation upon its line. Second, sir, if it could be shown that the canals of the State are insufficient in capacity for even present demands, I should oppose the proposition for lock enlargement upon the ground of impracticability as to the proper results as well as for its unsoundness of political and financial policy. I believe the present locks will admit of boats as large as the present prism of the canal in question will well accommodate. The experiment now proposed is one that we have tried. I think that the Erie canal, when first completed, was intended to pass boats of forty tons burden. It was afterward attempted to use boats of ninety tons burden in the small prism named, and the trouble in consequence resulted in general canal enlargement. It is now proposed by gentlemen upon this floor to enlarge one tier of locks and use boats of from four hundred to six hundred tons burden in a canal channel which is only well adapted to boats of two hundred tons burden. Are there any doubts as to what would be the result of this proposed experiment? If I am right in the result of my conclusions, sir, the enlargement of the locks means entire canal enlargement. If I am right in this, sir, eight millions of dollars means only the first installment of many millions which must follow to complete a work which the eight millions would merely begin. Now, Mr. Chairman, I believe in meeting matters squarely. I hope to live to see the day when the prosperity of our country will demand the building of a ship-canal through our State, and whenever that time arrives I hope that the people of our State will be so relieved from their present burden of taxation and have their faith so improved in the

financial policy of the State, and the unyielding honesty and integrity of its administrative agency, as to favor the measure as with one voice. But when that time comes I shall hope to see the subject presented upon the broad, consistent, common sense ground of entire canal enlargement, because of the necessity for increased capacity for transportation, and not upon a single lock basis; and upon a necessity that is for the present, at least, purely imaginary. The enterprise of our people is proverbial. The patriotism of our State is a matter of history. The public spirit, the generosity and love of country which have been exhibited in the past, I believe, will not fail us in the future. Restore and establish public confidence in regard to the incorruptible soundness of our provisional and administrative State policy, and I will guarantee that the people will never fail to respond, whether called upon for heroic deeds in defense of country, or for financial aid for laudable enterprise. I have great faith Mr. Chairman, in the American people. I am proud, sir, that I am a citizen of the State of New York; but I do not agree with those who imagine that our national greatness in territory or wealth, or the more than Spartan valor of our arms, will enable us to press recklessly and successfully forward in search of empire and political power, regardless of the right and the demands of justice. Neither that our present responsibility as a State, and the entire confidence of the people in the soundness of the financial ability of the State to pay all just demands, can be relied upon for the prosecution of schemes which are not financially sound. With truth and justice on our side our national arms are invincible against any earthly foe. In support of error and injustice we should be as Sampson shorn of his locks. So a sound financial system in regard to State credit and internal improvements, honestly administered will develop to us in the future a prosperity of which the present is but the opening dawn. An opposite policy will, if carried out, establish in history the sad fact that the zenith of prosperity of the Empire State was attained about the middle of the 19th century. Let us not be so brazen-faced as to ask the people to either tax themselves or pledge the faith of the State for millions of money for canal enlargement, until we can show them that we have erected a barrier so formidable between the money of the people and the cormorants and thieves and dishonest men who have grown rich from the public treasury, as to effectually secure the honest application of public funds to the public improvements for which such funds were set apart. This Convention proposes a change of policy in regard to canal administration. Let us wait and see if that policy shall result in preventing those who work for the State from receiving three or four times as much compensation for the labor which they perform for the State as they would expect to receive if they performed the same labor for an individual. If any gentleman upon this floor wishes a practical demonstration of this idea, it can be seen almost within a stone's throw of this capitol. If any gentleman wishes documentary evidence in regard to the same, let him carefully read the report of the

Senate Committee of investigation. If this is not enough let him traverse our canals and see the neglect and dilapidation upon the canals, on the one hand, and view the fine mansions and count the bank stock of many of the contractors of the "ring" upon the other; and if he does not, after this investigation, most heartily subscribe to the doctrine of reform and retrenchment, first, and enlargement when needed, I shall be greatly surprised. Retrenchment, so far as it can be carried without interfering with the prosperity of the State, economy and honesty in administration and execution, and relief from debt, is the doctrine which the people will sanction, regardless of party idols or of party platforms. The question of finance, in my judgment, will constitute the pivot upon which many political questions of the future are to turn. The farmers of Herkimer county are realizing only about two-thirds as much profit from their labors this year as they realized last year; and they, together with the laboring men of this State, who have contributed so generously of their substance for the preservation of the government during its recent years of peril—I say, Mr. Chairman, that the hardy and intelligent yeomanry of this State will hesitate before, with their votes, they sanction the expenditure of moneys for purposes not immediately connected with and necessary to the prosperity of the State, whether the scheme of expenditure originates with this body or with a future Legislature. I know of no better way to manage the financial affairs of a State than to be governed by the same principles of careful economy which are exercised by a discreet, competent business man in managing his individual affairs. Is there a gentleman upon this floor who would, if he were the sole owner of the canals of this State, in their present condition, and he responsible for our present canal debts, borrow or pledge himself for eight millions of dollars with which to construct one tier of large locks? Would the success of our past experiments in applying steam to the navigation of our canals be sufficient to stimulate an individual to this action? Boats which have failed in the shallow, narrow waters of the Erie canal have worked satisfactorily in the wider and deeper waters of the Hudson river. Mr. Chairman, when I remember that the outstanding debts of this State amount to nearly \$50,000,000; that the debts of the towns, villages, counties and cities of this State amount to \$85,000,000; that the proportion of the national debt belonging to this State to pay will not vary far from \$500,000,000, making a total of between six and seven hundred millions of dollars, which is equal to more than one-third of the assessed valuation of the property of the State, and after such reflections go forward to the consideration of proposed schemes, for the expenditure of millions more of the people's money—at a time when financial matters are unsettled—at a time when labor and material are exorbitantly high—at a time when it cannot be clearly shown that the necessity for the proposed enlargement is immediate; I must confess, that I am greatly concerned. I shall fear for the financial welfare of the State, when it shall have engaged in a policy like the one proposed. The

credit of the State, which has thus far remained unimpaired, will, if this doctrine is established, at this time, become weakened; and that sad train of financial disasters which has been exhibited in the history of some other of the States of this Union will hang as clouds of blackness to check the tide of our prosperity. Values are unstable and fluctuate with every varying breeze, and will remain so until our present paper promises to pay shall be redeemed in gold and silver. There is no such demand for the enlargement of the canals, as to necessity, as to demand that the State shall go into the work at a time when it will have to pay upon every dollar that it uses in the same a premium of from 40 to 50 per cent. The people of this State are perfectly willing to discharge all of their present financial obligations, remembering as they do the great necessities which caused their creation; but there is a limit above and beyond which the people cannot be taxed, and will not respond. Then, Mr. Chairman, when I attempt to calm my fears by looking at the compass of history, my heart sinks again, as I read upon its dial-plate our financial record after the war of 1812, and see those dark spots made by those troublesome years—1827, '37, '47, '57, and remember that we are now amid the changes and doubts of 1867 and the old ship of state loaded with debts as the was never loaded before—when I remember that our national system of finance does not receive the entire support of the people, and that it must be considered by its best friends as an experiment, and when I see the discord which exists between the President and Congress, and then, when I glance back again to history for encouragement and the first thing that I behold is the Ruggles stock policy which tolled the age of the whig party of the time, and made food to stimulate the "old tenth legion" of my native county on to victory—I say from such reflections, Mr. Chairman, my fears are doubled—and when I remember again that the political party to which I belong, must father every measure which shall be finally proposed by this Convention, I cannot refrain from raising my feeble voice in warning, and entering my most earnest protest against the adoption by this Convention of a proposition, which at this time is so hazardous and which I believe the people would most assuredly reject. Mr. Chairman, while I am opposed to canal enlargement as an immediate measure of State policy, I am as firmly opposed to that feature of the report of the Committee on Finance which proposes, by a constitutional provision, to delay the enlargement of any of the canals of the State until the debt of the State is paid. As an individual, sir, I do not wish to bind myself by a contract of twenty years duration or of ten years duration that I will not pledge my credit or borrow money for the enlargement or improvement of fiscal schemes in which I am already engaged, in which I may propose to engage, especially when shrewd men upon every hand are engaged in the same business that I am, and are entirely free in their action from such restrictions. Now, our State has to compete with other States in carrying-trade, and I wish her to be in such a position that if it shall appear in three years, in five

years, or ten years from the present, that the development and prosperity of the great North-west has gone forward to that extent and been attended with such results as to flood our western borders with freight for tide-water, which our present facilities would not let through; that she can enlarge her canals and improve her means of transportation to that extent which actual needs may require. Gentlemen upon this floor will remember that those members of the Convention of twenty years ago who came the nearest predicting what has actually transpired within the last twenty years were called visionary in their schemes and fanatical in their expressions; but to-day we can testify that that which was styled fanaticism twenty years ago is foggy conservatism of to-day; that the then visions of future increase, of enterprise, population and wealth are weak and pusillanimous when compared with facts as they exist to-day in our own State and nation. I have great faith in the future, because I have great faith in the energy, the enterprise, the virtue and the patriotism of the people. That spirit of indomitable enterprise and scientific research, which has built our canals, constructed our railroads, tunneled mountains, hung its highways in the very face of roaring cataracts and over the broad surface of rivers, unsealed the hidden treasures of earth, brought to light the mysteries of the deep, annihilated time and space by telegraphic communication, made broad acres to teem with golden harvests and many of the waste places of earth to blossom as the rose, I see blended with thousands of other elements of success; and remembering our recent history as a State and nation, I dare not favor a constitutional measure which may at no distant period of time in the future stand as a stumbling-block to the commerce and an impediment to the prosperity of our State. It seems to me, Mr. Chairman, that this whole matter of canal enlargement should be left to the Legislature. I do not like to criticize either the judgment or the action of my superiors, but it is my conscientious belief that one of the gravest errors of this Convention has been a desire to legislate, or in other words, to establish by constitutional provision that which should be left to the people to control through the Legislature, as their interests from time to time may require. A Constitution should protect the people and every individual member of society in the broadest freedom of action which is consistent with the general welfare. We were not sent here by the people to mold fetters for the people. There is far more danger of our doing too much in this Convention than there is of our doing too little. The experiment has often been tried of legislating knaves into honest men, and has as often failed. Honest men have frequently been legislated into knaves, in reputation at least, if not in fact, as our present canal system most conclusively proves. That there have been dishonest legislators and dishonest legislation in the past there can be no question. If this is the fault of the legislative system let us abolish or change the system; if it has resulted from the fact that dishonest men have been sent to the Legislature, that is a matter for the people to look after, and not for this Convention.

A few dishonest men have been, and always will be found in all legislative bodies. This fact does not necessarily prove, or go very far toward proving, that the laws passed by legislative bodies are not in accordance with the wishes of the people—or that it is unsafe to trust great interests with the direct representatives of the people of the State. Who are the men who have composed our past Legislatures? The large number of this honorable body who have at some time in their past history represented a constituency in the Legislature of this State—well answers my question. I do not have the fears which some gentlemen seem to have, who have never been and perhaps never will be members of a legislative body—who rise almost daily in their seats—talk of the dishonesty of the Legislature—and pharisaically thank God, that they are not as other men—and especially that they have not been members of the Legislature. I believe that the Legislature can be safely trusted in the future, as it has been in the past, to inaugurate such measures for the improvement of our canal system, as a wise public sentiment shall demand. The Constitution of 1846 was found to be inadequate in its provisions for the enlargement and improvement of our system of internal improvements. The Legislature has at various times inaugurated amendments thereto, some of which have received the sanction of the people and become a part of the fundamental law of the State. What the Legislature has done in the past, it may do in the future, and it is my conscientious belief that for reasons named, and for many which might be named, that this entire question of canal enlargement should be left with the Legislature, and I shall, at the proper time, unless a plan that suits me better is proposed, offer an amendment which will in substance allow the Legislature to propose canal enlargement at such a time as in their judgment the best interests of the State shall demand, and to appropriate canal revenues for the same, whether the State debt shall be entirely paid or not; also providing that all schemes for canal enlargement, or for appropriating the revenues of the State, or for taxation for the same, shall be submitted to the people of the State for their approval or rejection at the next general election which may follow such legislative action. It seems to me, Mr. Chairman, that no real friend to canal enlargement, when the same shall be needed, and to a sound canal policy for the present, can for a moment favor the immediate submission to the people of a proposition for lock enlargement like that proposed by the Committee on Canals. And it seems to me to be equally clear that any man who has faith in the future of this country, and who is a well-wisher to the future prosperity of this State, cannot give his sanction to the tie-up policy of the report of the Committee on Finance, which would in effect prevent canal enlargement for many years to come, let the necessities for the same be ever so great. The people have trusted us to come here to revise the fundamental law of the State, and let us, at least, show in return, that we have sufficient confidence in the people to trust them to control the appropriation of State funds, in such a manner and for such purposes as

the best interests of the State may require. Let us, as friends of the canals, and as canal administrators, show ourselves faithful over that which we already have, before we ask to be made rulers over much more. Let us first put our canals in perfect repair. I imagine that very few gentlemen upon this floor really comprehend the extent of the labor involved in this proposition. Why is it that in a season like the present, so many boats are unemployed, and our railroads so full of business? I answer that our railroads and express companies are sure to promptly carry goods to their destination, while if a merchant or a business man ships his goods by canal, it is a very grave question whether a break in the canal bank, or the tumbling down of a rotten lock gate will not delay his goods for weeks, and after such experiences and losses he learns to employ the railroad, not so much from the difference in speed, but to avoid protracted delays in the delivery of freight. I concur most heartily with the gentleman from Erie [Mr. Prosser] in the idea that a common sense man who has run a scow upon our canals for a term of years, is better authority as to the practical workings of our canals, than engineers' reports. Practical knowledge derived from experience is of far more service to this committee than all the oratory spiced with poetry, and all the theories spiced with sophistry which the inexperienced can bring to our consideration. I have talked upon this subject with many men of this experienced class, and I have never yet heard one say that the Erie canal had not abundant capacity for transportation, if kept to its lawful depth and in good repair, with its locks properly tended. They say put the canals in proper order, and keep them so, and it will be found that our canals have abundant capacity for transportation to meet all present or immediately prospective demands. They tell me that the lack of capacity is to a far greater extent on the part of the men who manage the canal than with the canal itself. Entertaining as I do, Mr. Chairman, the views which I have thus briefly expressed, I shall feel it to be my duty to oppose, both in this Convention and elsewhere, in every honorable way, both the eight million scheme of the Committee on Canals and the tie-up policy of the Committee on Finance. Before I take my seat, allow me to thank the committee for their excellent attention, and to say that if any member has suffered extensively either in mind or body, during the time that I have occupied, I have had experiences in my life which from their freshness in my memory enable me to sympathize most deeply with them in their affliction, which is now ended.

Mr. BECKWITH—I rise for the purpose of making a few remarks, which I would not do at this late hour, were it not for the fact that my more immediate constituents, are most deeply interested in a public work belonging to the people of this State, which seems thus far to have been forgotten or almost entirely ignored. I refer to the Champlain canal. I would not, as I remarked, at this late hour of the night, after all this discussion, trouble the committee one moment, did I not feel it to be an imperative duty to bring to the consideration of this committee,

some few facts in regard to that canal. It would seem from the arguments which have been addressed to this committee that there is no other public work within the State of New York belonging to the State worthy of consideration except the great Erie canal. I concede that canal is one of which we may be proud, and one which will attract attention and call forth the best minds in its further improvement. I wish the committee to listen to the few facts which I shall bring to their consideration. But before I refer to those facts, I desire to say that I am opposed to the policy, which the Finance Committee proposes for our adoption, and I will give briefly a few reasons for my opposition. In the first place I think there is danger of our committing two errors; one is the introducing into this Constitution of matters that are purely legislative which should be left to the Legislature; the second is there seems to be a disposition on the part of this Convention so to curtail the power of the Legislature as to almost bind it hand and foot. Now, I am opposed to such inhibitions upon the power of the Legislature as shall leave no flexibility, no opportunity for changing its policy in any particular, if it should be found not to work well. These two extremes I think should be avoided. The policy which the Finance Committee propose will tie the Legislature hand and foot especially so far as our canal policy is concerned; there will be no flexibility, no opportunity for the Legislature to make any provision for the further improvement of the canals, however large the demands of commerce or the wants of the State, except by an amendment of the Constitution, which will be surrounded with delay and expense. Again, I am opposed to the first section of the article reported by the Finance Committee, for the reasons that, in its statement of the indebtedness of the State they have included \$18,007,289.68, which is not owing by the State, but is owing to it. If gentlemen will look at the language used in the first section they will see that a man who is not familiar with the finances of this State, or a stranger who knows nothing of them, on reading that section, would suppose that the State of New York was indebted to the amount of \$66,000,000, when the Finance Committee, and every one who is familiar with the finances of this State, know it has no such indebtedness; that the true indebtedness of the State is less than \$21,000,000, and the bounty debt. Now, it also appears that the Finance Committee, in getting at the indebtedness of the State, has disregarded the sum of \$200,000 which has been paid annually from the revenues of the canal to the State of New York, for about fifteen years, amounting to some \$3,000,000. They have given, as I understand, no credit for those moneys, have treated it as a gift from the canals to the State, when the language of the Constitution of 1846 is, "there shall be paid out of the surplus revenues of the canals to the treasury of the State, on or before the thirtieth day of September in each year, for the use and benefit of the general fund, such sum, not exceeding two hundred thousand dollars." Now, if it is to be paid, so far as it goes it should liquidate the general fund debt. That, I have no doubt, was the intention of the

framers of the Constitution of 1846. The gentleman says, but that is not to be taken into account, that the whole matter was settled, and \$200,000 was to be given annually to the State. Given? No; it was to be paid to pay off the general fund debt. It was a payment, not a gift. Again, the gentleman says that he objects to the report of the Canal Committee because it violates the pledges of the State. What pledges? The pledge to pay these \$18,000,000, which, if the \$200,000 and the interest thereon be deducted from it, would reduce it very much. Now, who made the pledge? Why, the people of the State in the Constitution of 1846. To whom did they pledge it? To themselves. What—a man pledge his own property to himself, and yet be unable to relinquish that pledge without a violation of good faith? I pledge to myself my farm; I mortgage it to myself to repay me the moneys which I paid out to buy that farm. Can I not discharge that pledge or mortgage unless I receive money from the farm without being guilty of bad faith? Let us look a little further at the doctrine of the gentleman. If that be a violation of good faith I would like to know what a postponement of the bounty debt is. It is proposed to postpone this debt until the State has paid all the other debts, and then providing that that debt shall be paid out of the revenues of the canal. The people of this State, by adopting a law, which was submitted to them, pledged to the holders of that debt the payment of it in twelve years with interest, and that they would levy taxes for that purpose. Yet it is proposed to put it off. If one is a violation of good faith, the other is also. But I believe that neither is a violation of good faith. One is the pledgor releases the pledge—that is he pledges to himself and releases it. The argument is not sound even in the last case. If the State should see fit on the credit of the canal revenues, to borrow money to pay the bounty debt, the creditor of the State would have no reason of complaint, because if he gets his money that is all he has a right to demand. I say, therefore, I am opposed to this first section of the Finance Committee report, for it carries the idea, to plain people at least, who are not familiar with the finances of the State, that the State is indebted \$66,000,000, when in point of fact, it is simply indebted in the amount of \$48,000,000. I hope the motion of the gentleman from Erie will prevail. But my object more particularly, in rising to address the committee was to call their attention to the Champlain canal. The friends of the Erie canal have given us their full view of its wants and its necessities, and in all this discussion the lateral canals, with the exception of one which was brought to our notice by the gentleman from Steuben [Mr. Spencer], have been entirely left out of view. In the first place let me call the attention of the committee to a few facts—and I would that every member of this Convention were present, for I do not rise to make a speech for the purpose of having it printed, that it may be read by my constituents; I care nothing for that. But I wish to get facts before this Convention and let them know that there is such a place as Lake Champlain and that there is a canal from Lake Champlain to

the Hudson river, and that it is a very important work. Let me say to the gentleman that nearly one-fifth of all the tonnage carried to and from the Hudson river over the canals of this State passes over the Champlain canal—nearly one-fifth. Now, look at it. In 1846 there were 2,268,662 tons passed over the Erie canal coming from other canals both ways; on the Champlain canal at that time there were only 299,924 tons. That was in 1846. But when you come down to 1866 you will find that there passed over all the canals of this State both ways 5,775,220 tons; of that 1,034,444 tons passed over the Champlain canal—almost one-fifth. The tonnage on the Champlain canal has almost quadrupled in twenty years. It has increased from 299,924 to 1,034,444, a good deal more than trebled; it has almost quadrupled. The business of the canal is constantly increasing, and it cannot this season do probably more than about one-half of the business that is ready to be done on it if it had the required capacity. Let me say, furthermore, in the month of July—the third week of July—lumber passed over the Erie canal to this place to the amount of 11,883,500 feet, while there passed over the Champlain canal the same week 11,649,000 feet, almost as much as over the Erie canal. And I understand (this only personal information) that most of that lumber which passes over the Erie canal comes from Oswego. I also took the trouble to go to the auditor's office recently, and he gave me a statement showing that the tolls on the Champlain canal for the month of July, 1866, were twenty-five thousand nine hundred and odd dollars. This year it is over thirty-seven thousand dollars, the exact amount I do not now recollect; I have mislaid my memorandum, but it was thirty-seven thousand and odd hundred dollars. Now, what do these facts prove? They prove that the business of the Champlain canal is increasing more rapidly than on any other canal of the State, notwithstanding the bad management and notwithstanding they had one boy to take charge, at one place, of three locks, so that boats were blocked up and greatly delayed, and owing to these great delays it was found necessary to have the matter investigated, and a gentleman not in the service of the State, at the request of the canal board, proceeded to the canal to examine into its condition, and he found it necessary to direct other men to be placed on the canal so that the boats could get through the locks; that gentleman made a report, which has been published by the canal board; I will not read it, but commend its perusal to the committee. The gentleman who was chairman of the Committee on Finance complained of the report of the Canal Committee, that it would substantially violate the pledges of the State. I ask him in all candor, and I ask the committee in all candor, if the Finance Committee's report should be adopted, is it not a direct violation of the pledges of the people of this State to the people doing business on the Champlain canal? Men have gone into the northern part of New York; they have there opened iron ore beds; they have put up iron works, forges, rolling mills and nail factories, and are engaged extensively in the manufacture of iron. The State, in 1854, voted an amendment

to the Constitution, providing for an enlargement of the locks on the Champlain canal; in pursuance of that provision all the locks have been enlarged except six or seven, and means have been provided for the enlargement of one of these remaining six or seven, and unless those locks are enlarged will not the State fail to perform its pledge? If the power for its enlargement is taken away by this new Constitution, as is proposed by the Finance Committee, they must remain of their present capacity and the benefit arising from the enlargement of those which have been completed will be lost, or nearly so but not wholly, because boats can be locked through the enlarged locks much easier than through the small locks. Now, I ask if the prohibiting of the enlargement of the remaining small locks, as proposed by the Finance Committee, is not a direct violation of the pledges of the State to the people doing business on the Champlain canal. Again, let me say to the Committee, Mr. Chairman, that in 1864 the Legislature provided that the Champlain canal should be enlarged to the width of thirty-five feet on the bottom and five feet in depth; that has been done only in part. Now, I want to know if the State does not stand pledged to an enlargement of the canal to that extent; if it would not be a breach of good faith not to complete that work, and if it would not be a bad policy to stop and leave the work on that canal unfinished; if it would not be a "penny wise and pound foolish" policy not to complete that enlargement of the canals and the remaining locks, as provided for by the amendment of the Constitution in 1846 and the act of 1864. The Finance Committee (I presume through a mistake, not probably understanding the matter) have omitted to provide for that work, and if their propositions be adopted, then that work cannot be done, and the faith of the State is broken and the business of the canal is injured. Let me state to the gentlemen that they have no idea of the increase of business on Lake Champlain and the Champlain canal within the last five or six years since the breaking out of the war, which, in consequence of the high price of iron, did more to develop the iron resources of the North than anything else—it stimulated it. Large iron establishments sprang up. I am credibly informed by a gentleman who has charge of the transportation of ore from one single wharf on Lake Champlain, that some twenty boats are daily loaded with ore and passed through the Champlain canal to different places, some on the Erie canal, some to iron works on the Hudson river, some to Fort Edward and other places in this State, and also to Pittsburgh, Pennsylvania. It goes to the last mentioned place for this reason, that our ores are of the very best quality of magnetic ore, and by mixing them with Pennsylvania ores they make much better iron. By mixing a small part of the ores of Essex and Clinton county with their ore they make a much better material of iron. Not only has that business increased, but I am informed that the State of New York is to-day engaged in manufacturing about ten tons of nails a day at the Clinton State prison. That is what they calculated to do. They take the ore out of the earth, burn it, stamp and wash it, make it into

blooms, roll it out into nail plates, and then it is cut into nails, and those nails are shipped generally to a southern market for sale. And that is not the only establishment of the kind; there are many other iron works in northern New York, and new establishments are continually springing up for the making of iron. Now, I say if these remaining locks are not completed as contemplated by the amendment to the Constitution of 1854, and this canal is not completed to the width of thirty-five feet on the bottom, and five in depth of water as provided by the act of 1864, it cannot do the business which would flow to it, and it will probably, even if so enlarged, not be of sufficient capacity to do all the business that will be provided in future years for it to do. I was told by a gentleman who is largely engaged in the lumbering business at Burlington, Vermont, that there are 400,000,000 feet of lumber on the Ottawa River, and nearly the same quantity at Three Rivers, below Montreal, ready to be transported over the Champlain canal to a southern market. But that the owners of this lumber were discouraged, and anticipated that they would not be able to get more than half of it through. This arises in part in consequence of the fact that the Champlain canal was not opened this year until the first of June, when it should have been opened on the first of May. I wish gentlemen to remember that there is another work beside the Erie canal of some little importance. That canal is only sixty-three miles in length; it paid last year \$180,551 in tolls, and it is paying much larger, thus far this year than last. Shall that work be suffered to remain in its present condition? When the greater part of the locks have been already enlarged, shall that canal be allowed to remain, thus limited in its capacity when the demands of commerce on it are so great; and not be enlarged according to the amendment of the Constitution in 1854, and the acts of 1864? Are all the expenditures for the enlargement and improvement of this canal to be lost to the State, for the want of the completion of the work thus commenced and nearly done? I trust not; when gentlemen come to look at the subject as it is, I am satisfied they will concur with me, that that work should be completed. I am free to admit that I am opposed to the State incurring any further debt that shall increase direct taxation. We are now burdened with taxes. I do not ask that this work shall be done by a resort to taxation. I only desire that the revenues of the canal may be from time to time appropriated to complete the work, that we may have the benefit of what has been already done. But if the money is to be appropriated and is to be expended as wastefully and corruptly as it has been for the few years past, I am almost ready to say, give us not a dollar; for I am satisfied there has been more fraud on the Champlain canal, in proportion to the moneys there expended, than on all, or any of the other canals of this State. If gentlemen will take pains to look over the evidence, much of which has been called to their attention by the gentleman from Kings county [Mr. Barnard], they will find that I am fully borne out in

this statement. The management has been very bad. I will not read the testimony, showing bad management, and thus detain the committee; their time is, at this late day, too important to be thus taken up. But if gentlemen will read the report of Mr. Barkley, of Washington county, they will find abundant reason for the charges of bad management. Now, this ought not to be; if the money is to be put into the pockets of the contractors who do no work, the State had better keep its money and let the canal go. If the money can be judiciously expended, then I think it is wise policy to complete that canal; and I think the friends of the Erie canal at Buffalo, and the friends of the Oswego canal at Oswego need not fear the Champlain canal. It is true that the Canadian government have built a canal from Chambly to St. John's, on Lake Champlain—a canal larger than ours, by which navigation from the St. Lawrence is opened up to New York. Large quantities of goods are, and have been, shipped from New York to Montreal and Upper Canada. They are bonded in New York, taken to Rouse's Point, there taken out of bond and carried into Canada. I doubt not, if the reciprocity act had remained in force, the business of the canal this season would have been (supposing it had the capacity) much larger than it now is. But let gentlemen look at the subject. If they will look at the map of British North America, they will see that there is an immense tract of country bordering on the Ottawa river. Now, where is New York, some fifty or sixty years hence, to get her lumber? There is a northern country at head waters of the Ottawa and other large streams rising near Hudson's bay, which empty into the St. Lawrence an immense world of the finest timber that can be found anywhere on this continent. And it is inexhaustible. A great deal of that country will never be cultivated. It must grow timber. There timber of excellent quality can be procured. I have known vessels to go from Whitehall up the Ottawa river, there load with timber, come down into the St. Lawrence below Montreal, into the Sorel river and Chambly canal, then into Lake Champlain, and then to this city without breaking bulk. On our lake, sail vessels have almost entirely disappeared, except Canada vessels which cannot enter our canal, and which are mostly sail vessels. Many Canadian vessels come into our water through the Chambly canal, it being larger than ours, freighted with lumber and grain for Whitehall. With the exception of those Canadian vessels, almost all the business on Lake Champlain is done with canal-boats. They are taken in tows by propellers, in numbers of twenty to thirty at a time, to Whitehall, and thence they pass to the cities of Troy and Albany, and many to New York, without breaking bulk. When the Canal Committee had this matter under consideration, I did not know but vessels carrying five or six hundred tons might be loaded at Chicago, and be towed through the western lakes to Buffalo, and thence pass through the Erie canal to New York city without breaking bulk, if the locks on the Erie canal should be enlarged as proposed by the Canal Committee. I was, therefore, as one of the Canal

Committee, for that among other reasons in favor of enlarged locks on the Erie canal. But from what I have heard here, it probably would be dangerous navigation for such vessels through those lakes. But on Lake Champlain there is no danger at all. Most of the business on our lake is done by canal-boats towed by steamers and propellers. Now, if gentlemen will look at the map of North America they will see that Montreal, with a very short canal, is almost as near to Milwaukee and Chicago as Buffalo is. You come from Lake Michigan, pass directly through Lake Huron, east into Georgian bay, which is an inland sea almost of itself, then up what is called French river into Lake Nipissing, and thence a short distance to the Ottawa river, which passes down to the head of Montreal island, where it enters the St. Lawrence river. Should a canal be built from Lake Nipissing to the Ottawa river, it will bring Montreal almost as near to Milwaukee and Chicago and Lake Superior as is Buffalo. And yet the friends of the Erie canal need not be alarmed; there will be business enough for all of them. There is an immense territory on the waters of Lake Erie and Lake Ontario, and Lake Huron and Lake Superior. Recently the Hudson's Bay Company has been solicited, as I have seen in the public newspapers, to colonize their lands around Lake Superior, and west of it. The probability is it will soon be done. If it should be, it must become of great importance to the commercial world. It is a territory of great extent. Its soil is rich and adapted to the production of most kinds of grain. It is rich in minerals, rich in lumber, and almost an empire itself in extent. The time will come, I have no doubt, when there will be an active, industrious and populous community in all that section of the country. But where will this business go? Will it go to New York? Will it get by canal across into the Mississippi river, and pass down to New Orleans? Or will it pass down Lake Superior over Lake Huron into Georgian bay, thence to Lake Nipissing, thence into the Ottawa river, or into Lake Simcoe, which lies south-easterly from Georgian bay and but a short distance from Lake Ontario, and thence into Lake Ontario? If it should take that route then Oswego is its place of entry, if it is destined for New York. The subject of building a ship canal from Caughnawaga to Lake Champlain has been frequently agitated; and let me say to the committee that the Canadian government in building their canals build larger and better canals than we do. The proposed or talked of canal from Caughnawaga, which is just above the falls, at the head of Montreal island, would cross to St. John's on Lake Champlain, thus opening a ship-canal from the St. Lawrence to Lake Champlain. When that is done, Caughnawaga will be at the foot of navigation on these lakes. Let me tell you Montreal is an enterprising city; its people are struggling hard by their railroads and their canals to secure the western trade. I have no doubt that within

the lives of a great many present in this Convention a canal will be built from Lake Simcoe into Lake Ontario, so there will be communication over Lake Huron into Georgian bay, thence through Lake Simcoe into Lake Ontario, bringing it directly to Montreal. Then where shall the freight go? Shall it find its way to New York instead of going down the St. Lawrence river to the ocean? Gentlemen may say there is no danger of New York losing a good share of that business. Let me tell you there is Yankee enterprise in Canada; they are determined to carry forward these great enterprises; and they have thus far had the English government to aid them in all these enterprises. It is only a short time since a company were exploring for a railroad from Portland, Maine, to Rouse's Point on Lake Champlain, where the Ogdenburgh road crosses that lake. Gentlemen need not be surprised if Canada should, within a very few years, drop into the lap of the United States. If that time should come I have not the least doubt that a ship-canal from Caughnawaga to Lake Champlain, a distance of only twenty-five miles, will be built. It is as flat and level a country as any man ever saw. The water on Lake Champlain is, I am informed, twelve feet higher than it is in the St. Lawrence at Caughnawaga. Let these Canada canals be completed, and the Erie canal and the Champlain canal will have to be enlarged or a large share of that business will go to Boston or Portland by railroad, or down the St. Lawrence to the ocean. It is well to look at these things. I do not advise or counsel extravagance in any of these matters. Still, if the demands of commerce are such as to justify expenditure, I say we ought, at least, to leave the Legislature power to meet these demands when they shall arise. Mr. Chairman, I think I have said all I wish to say to this committee. I only regret that other members of the Convention were not present to have listened to these facts. There are other things which I had intended to say had not other gentlemen anticipated me; but, under the circumstances, I will occupy your time no longer.

Mr. VERPLANCK—I move the committee rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Verplanck, and it was declared carried, on a division, by a vote of 42 to 36.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. SHERMAN, from the Committee of the Whole reported that the committee had had under consideration the report of the Committee on Finance and the Committee on Canals and made some progress therein, but not having gone through therewith had directed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

On motion of Mr. WALES the Convention adjourned.

THURSDAY, September 12, 1867.

The Convention met at 9 o'clock A. M.

Prayer was offered by Rev. R. ADELBURG.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. SCHOONMAKER presented the petition of certain residents of Ulster county relative to draining swamp lands.

Which was referred to the Committee on Industrial Interests.

Mr. ARCHER presented the remonstrance of the board of education, principal and teachers of the Newark Union School and Academy against abrogating the Board of Regents of the University.

Which was referred to the Committee of the Whole.

Mr. A. F. ALLEN presented the petition of A. Plumb and others on the same subject.

Which took the same reference.

Mr. FOWLER presented a petition from Oneida Seminary on the same subject.

Which took the same reference.

Mr. T. W. DWIGHT—I present a petition from Hamilton College, abrogating the Board of Regents of the University. This petition is signed by a number of prominent gentlemen, such as ex-Governor Seymour, Judge Denio and Judge Foster. As a matter of courtesy to those gentlemen, I ask that the petition be read.

There being no objection the SECRETARY read the petition.

The petition was referred to the Committee of the Whole.

Mr. N. M. ALLEN presented a remonstrance from the trustees of Fredonia Academy, and fifty-nine others, citizens of Fredonia, on the same subject.

Which took the same reference.

Mr. CHURCH presented the remonstrance of the trustees and teachers of the Albion Academy on the same subject.

Which took the same reference.

The PRESIDENT presented a communication from the Comptroller in answer to a resolution adopted by the Convention on the 11th of July.

Which was laid on the table and ordered to be printed.

Mr. A. F. ALLEN—The Committee on Finance have had several meetings considering the subject of taxation; they have not agreed on a report as a committee. I make the following report and ask that it be read, and referred to the Committee of the Whole and printed.

The SECRETARY proceeded to read the report as follows:

The undersigned, from the Committee on Finance, reports the following sections as a minority report, and asks that it be referred to the Committee of the Whole, and be considered with the report of that committee, and that the same be printed.

A. F. ALLEN.

ALBANY, Sept. 12, 1867.

SECTION —. The Legislature shall provide by law at the first session thereof after the adoption of this Constitution for a uniform rate of assessment and taxation upon all the real and personal property within the State, whether owned by citi-

zens or non-residents, including all associations and corporations, domestic or foreign, bankers, bank shares, brokers, merchants or otherwise doing business in this State, and having a place of business therein, and having capital invested therein for the purpose of carrying on such corporate business, trade or manufactures, and such assessment shall be made upon the sworn return of the owner, manager, agent or person having such property in charge, and upon its actual cash value, and in such manner as shall insure equality in the distribution of the public burdens upon all property within this State, owned, used or invested therein for the carrying on of any trade, business or manufactures.

§ —. No deductions shall be made from the assessed valuation of the property of any person, corporation or association, or from the assessed value of any property, real or personal, by reason of any indebtedness due or to become due from the owner, person, corporation or association having such property in charge or owning and controlling the property so assessed.

§ —. The Legislature shall not hereafter exempt any property or class of property from taxation, except such as is now exempt by law.

Mr. E. BROOKS—Before that question of printing is put to the Convention, I desire to ask the chairman of the Finance Committee whether this report is in any sense a majority report or whether it has the concurrence of any number of the members of the committee, and I put this question, because a report like this is calculated very materially to disturb the business of the city of New York and of all the commercial business of the State.

The PRESIDENT—The Chair would inform the gentleman that it is a minority report, and was received as such.

Mr. CHURCH—The report is presented by the gentleman from Chautauqua [Mr. Allen] with the consent of the committee, as a minority report.

The report was referred to the Committee of the Whole and ordered to be printed.

Mr. SHERMAN—The resolution I offered yesterday to limit debate on the report of the Committees on the Canals and Finances, has had the unfortunate effect to cut off two gentlemen to whom the Convention might listen with pleasure and profit. One gentleman from Erie [Mr. Clinton], whose name in connection with the history of the State and especially with the canals, entitles him to be heard above all other men. The other gentleman is the chairman of the Canal Committee [Mr. Lapham], who opened this debate and should have, by parliamentary courtesy, the right to close it if he chooses. Those gentlemen have neither of them occupied any time of the Convention unnecessarily. I would, therefore, ask the Committee of the Whole to accord leave to those gentlemen to speak one hour each.

Mr. KETCHAM—I hope that courtesy will be extended to the gentleman who obtained the floor last night [Mr. Ludington] when the Convention adjourned.

Mr. SHERMAN—I will accept that suggestion.

Mr. KERNAN—I would ask the gentleman from Oneida [Mr. Sherman] to extend it also to

the chairman of the Committee on Finance. I do not know that that gentleman desires to be heard, but if the chairman of the Committee on Canals should be heard for an hour, perchance there might be some views expressed by him to which the chairman of the Finance Committee might wish to reply.

Mr. SHERMAN—If the chairman of the Committee on Finance desires further time I would willingly include him.

The question was put on the motion of Mr. Sherman, as modified, and it was declared adopted.

Mr. ARCHER—I call up for consideration the resolution offered by me yesterday.

The SECRETARY proceeded to read the resolution as follows:

WHEREAS, It appears by authoritative testimony on the files of the Convention that a corrupt combination was entered into in December last by the bidders for certain contracts for the repairs of the State canals, whereby such contracts were given to the highest bidders instead of the lowest, as the law contemplates, thereby involving the State in unwarrantable and wasteful expenditure; therefore,

Resolved, That the Attorney-General be requested to immediately commence legal proceedings to vacate such contracts for fraud and to take such proceedings in relation to officials of the State, if any, implicated, as shall vindicate the honor of the State and protect its interests in the future.

Mr. ARCHER—Inasmuch as the papers have misquoted my resolution by using the word "instructed," whereas the resolution read "requested," to obviate any possible misapprehension I ask that the resolution may be modified so that it will read in the commencement as follows:

Resolved, That in the opinion of this Convention the Attorney-General be requested to immediately commence legal proceedings to vacate such contracts for fraud, and to take such proceedings in relation to officials of the State, if any, implicated, as shall vindicate the honor of the State and protect its interests in the future.

The PRESIDENT—No action having been taken on the resolution, it may be so modified.

Mr. ARCHER—Upon the resolution I call the previous question.

The question was put upon ordering the previous question, and it was declared carried.

The question then recurred on the resolution, as modified, and it was declared adopted.

Mr. COLAHAN offered the following resolution:

WHEREAS, To all appearances the labors of this Convention cannot be completed with justice to the subjects under consideration in time to submit the same for approval by the people at the coming November election,

Resolved, That this Convention will take a recess from the 1st of October next, at twelve o'clock noon, until the 1st day of May, 1868, at twelve o'clock noon.

The resolution giving rise to debate, it was laid on the table.

Mr. FOLGER—By request I offer the following resolution:

The SECRETARY read the resolution as follows:

"Resolved, That the use of the Assembly Chamber be, and the same is hereby accorded to Lorenzo Sherwood, Esq., on the afternoon of Tuesday next, for the purpose of delivering an address on the subject of establishing a national system of freight railways in accordance with the principles and plan embraced in the bills now pending before Congress."

The question was put on the resolution of Mr. Folger, and it was declared adopted.

Mr. HADLEY—I ask leave of absence from the sittings of Saturday and Monday next.

There being no objection, leave was granted.

Mr. GRANT—I ask leave of absence from the sittings of this Convention until Monday evening.

There being no objection, leave was granted.

Mr. SCHELL—I ask leave of absence for Mr. Monell until Wednesday next.

There being no objection, leave was granted.

Mr. N. M. ALLEN—I ask leave of absence until Tuesday next.

There being no objection, leave was granted.

The Convention resolved itself into Committee of the Whole on the report of the Committees on Finance and on Canals, Mr. SHERMAN, of Oneida, in the chair.

The Chairman announced the question to be on the amendment offered by Mr. Verplanck.

Mr. CLINTON—Mr. Chairman, I feel under very great obligations for the courtesy which has been extended to me, and also to my constituents from the far western portion of the State. But I feel very apprehensive, Mr. Chairman, that instead of occupying one hour, I will be able, with my feeble body and reeling head, to continue for only fifteen minutes. I feel, sir, that the questions under debate are of the highest possible interest. They involve, in my judgment, and I believe in the judgment of all of us, the interest and the honor of the people of this State, and would to God that I were in a condition and had the power to vindicate those interests and that honor. I am emphatically a child of the people. There is no man living who has equal cause to love and honor them. If it were for their good, I would be willing to perish to-morrow. I venerate this noble people beyond the power of all expression; I am deeply grateful to them; others may love them, but no other man has equal cause to love and honor them. And it is mortifying that I come now to this great debate so ill-prepared and so utterly unable to set forward in a proper light that which I deem due to them. Now, Mr. Chairman, I am not, and I never was, an orator; but if I had the gift of eloquence, and if I could command every art of oratory I would scorn to employ them on these matters of such vital moment and pressing themselves so plainly, not merely upon the patriotism, but upon the practical good sense of the people. Neither am I a debater; I am unaccustomed to debate. I am old, now, and I am afraid, Mr. Chairman, that I shall be confused if the committee uses, what it so freely uses, the privilege of questioning. I remember some short time ago, I rose for the purpose simply of putting a question to the Convention, asking an answer, and showing briefly what conclusions different answers might lead me to; and a gentle-

man, one of my honorable colleagues, while I was making, perhaps, an unnecessary introduction, put to me the very question I was about to put to the Convention, and it so confused me that it drove me to my seat. Now, let me get through, if I can get through—if I have strength, and if I have mind enough to say the very little I would say—let me say it, and then question me as much as you please, and I will try to answer. Now, again, if I know myself, Mr. Chairman, and no man can be sure that he knows himself, I am not drawn to any conclusion which I have arrived at by any consideration of ancestral pride. It is a gratification to believe, as I do firmly believe, that De Witt Clinton, if he were now alive, would arrive at the same conclusions to which this debate has led me. And though I may be wrong, neither, if I know myself, am I at all influenced by my love of localities. I do love that splendid city of New York. I was born in it; my earliest childhood was spent there; it is the glory of America, and I would do anything to raise it. It is, in my judgment, an unreflecting and cold-blooded city in this matter of the canals, simply because it does not understand them. I love, too, what has grown into a large city—the city of Brooklyn. Why, I remember it, sir, when there were not more than twelve houses clustering around the ferry. And I love, too, the noble cities and villages that have grown up along the line of the canals. I love Albany; it was the home of my childhood. I love the intermediate cities; above all, I am free to confess, I do love the noble city of Buffalo. It is a great and growing city; it is full of life and energy; and I tell you there is not in that city one single merchant such as my honorable friend from New York [Mr. Opdyke] described. There is no man there that when a great question comes before him takes his ledger, and looks at it and says “my decision will rest entirely upon the question on which side of this ledger I must make an entry.” There is no such man there; they are public-spirited and high-spirited men; men who think of the whole country, and do not make the almighty dollar their idol; men who love liberty and love the union and love the world. But I must say in all frankness to my honorable friend from New York [Mr. Opdyke] that to my certain knowledge, he is mistaken. There may be here and there a petty shopkeeper in the city of New York who goes upon such a doctrine but the merchants of New York are princely they maintain that character which merchants—true merchants, everywhere sustain. Why, sir, must not a merchant take his risk; must he not be a big-hearted far-seeing man? Does he avoid risk? Did John Jacob Astor look simply at his ledger when he founded Astoria; did Vanderbilt look at his ledger when he gave that noble ship to the government; did Grinnell only look at his ledger when he sent his expedition north? Is the board of commerce of New York—that noble body to which we have looked up with pride and gratitude—is that composed of these shopkeepers? No such thing. I speak for the city of New York, and I say now that if the merchants of New York, the honorable merchants, could control—Oh, would that they could be brought together to

advise and control this matter—you would have a noble and stable canal policy. Now, Mr. Chairman, I do love all these localities, and I do love them dearly: I love Caesar much, but I do love Rome more. I love the whole people; I love every portion of my noble State. I never feel so happy as when, having by accident been beyond its limits, I again put my foot upon any portion of its soil. I feel as McGregor did when his foot was on his native heath. It is my State, my love, my pride. I would die for it cheerfully; I would like to live for it, but I am an old man now; my vigor has departed; I am worn by sorrow, by trouble, by toil, and my prayer has long been—Oh! give me a little rest before I go hence, and am seen no more forever. I stand in no man's way; I have no ambition; I would not add to my cares or my responsibilities; they are too heavy now for my worn frame. I love the canals; and why do I love them? I love them much, but I love commerce more. I love the canals as the instruments of commerce; I love them because the commerce conducted through them vivifies and beautifies our State. It animates the springs of industry, and tends to make us a happy and a prosperous people. Show me, Mr. Chairman, that these canals have ceased to bring about those benefits; show me that they can be profitably replaced by railroads or by anything, that their work will be better done, and I will say let them go; fill them up! It is commerce we want, vivifying, fructifying, civilizing commerce! Give us that. But the day of the canals has not yet departed. Some few gentlemen have, indeed, damned them with faint praise; and yet they show no signs of decrepitude or age. Their revenues are increasing; the bulk of the property passing through them is increasing; and the honor as well as the revenue of the State is still in a measure dependent upon those same canals. It is not for me to speak their eulogy. I have not the time even if I had the inclination. Mr. Chairman, I sat here when my honorable friend, the chairman of the Committee on Finances, read his report. I have to speak plainly, but let me say at the outset that I entertain for that gentleman nothing but respect; I entertain for the members of the Finance Committee nothing but respect; I entertain for every member of this Convention all due respect. I have said that I have no ambition; I have none; but I have a wish, a strong wish, that when our duties shall have been performed, and we have separated, that every member of this Convention will be able, if he thinks of me at all, to think well of me (it would pain me to think that I had hurt the feelings of any gentleman), and that every one of them, if he shall have occasion to speak of me, will say “He was a kindly and a genial man; he was honest; he was conscientious, and he tried to do his duty.” This is the impression which I shall hope to bear away of my friend the chairman of the Committee on Finance and every gentleman whom I really know. Now, I am a plain, blunt speaker, and it may possibly happen, when I talk on this matter, that some expression may be blurted out which may be too strong. Now, I say that I have not the most remote idea of saying anything offen-

sive; I wish to deal with the matter calmly and deliberately and kindly, and if any such expression bursts out let the gentleman remember what I have now declared, and take it, as it should be taken, in a Pickwickian sense. When the report of the Committee on Finances was read, I was not well; it came as it were from authority; it bore the signatures of admirable and very strong men, and I confess it came upon me like a chill. I heard it with astonishment; I was mortified and amazed. It seemed to me that the chairman of that committee, by that report, represented the honor and happiness of our dear country as dead, and he drew a funeral pall over the whole country; all was black and dark; I was horror-struck; I did not know where to turn; my heart was pained and sick. Mr. Chairman, when that gentleman had resumed his seat I looked up at him, expecting to see at least a Jeremiah, if not a Marius sitting amid the ruins of Carthage, and I was astonished and somewhat cheered when I saw that gentleman calm, complacent, pleasant looking as ever. I looked around the body of the House and saw only cheerful gentlemen. There were no tears flowing over the floor of this Convention. There is something strange about this report; there is something very strange about it. I walked out; I went through this ruined country—a very small portion of it—I walked the streets of Albany; I went into the highways and byways and I saw everywhere—what? Not a mourning grumbling people but an active and happy people. I saw there the babies clustering thick as autumnal leaves in Vallambrosa. I took the railroad and went to Luzerne. What a beautiful village! I almost wished that we had adjourned there. And in going there I passed through a country, not so fertile, perhaps, as the country generally in the western portion of the State, but still it was a lovely country, and everywhere it exhibited signs of industry and thrift; and in that village itself all was happy; and the babies there were thicker than ever; there was not a house that was not full of them—the darlings! And when I looked at that country certain reflections entered into my old head. There is no harm in telling them to the committee; they are so very simple. I am no orator; I do not mean to paint things too brightly. I looked around on that fair country. The glorious sun shone like God's smile upon it; and I began to think of our country—these United States of America. With my mind's eye I saw the Atlantic rolling along the rock-bound coast. There was Mount Washington towering up into the heavens and I fancied the rising sun had just touched the top of that great mountain. And there, in the far West, is Mount Lincoln, still loftier, with its peaks illumined by the pale, cold light of the midnight stars, both of them fit and eternal monuments of men whose names can never perish. And far beyond Mount Lincoln gleams the vast Pacific, and on the confines of the Arctic ocean shines out Mount Elias, and we look into a region of almost eternal snow. How many hours will that rapid sun take in traveling from where he shines down upon Mount Washington before he illumines Mount Lincoln? What is this country which lies on both sides and

between? How immensely varied and beautiful is the expanse! Up in the North we may hunt the whale and fish for the seal, and in the South we come into the very tropics, where your cotton—no longer king, thank God!—and sugar, and rice, abound. Here, too, in this ever great country are your tobacco, your cereals, your cattle upon ten thousand hills and plains, everything that can give animation to industry and create wealth. Then I looked, in my mind's eye, for a moment, at the people. I make no eulogies of the people, but they are a grand and a progressive people; they are not innumerable because they have been enumerated; but they are an immense people, and they are growing daily. And then I remember, too, that the smile of God, if we read correctly our history, and give true weight to its lessons, is upon this land and upon its people. He has carried us through everything, He will sustain us. The spirit of His Son, who died for us now broods over this land even as in the beginning He brooded over chaos and evoked light and life. Sir, this country is not to be restrained nor crushed by a debt of a few billions. In the course of a few years it will throw it off and march on to high and great achievements. I hope and trust, and I think it is not an altogether romantic hope, that from this country, this noble country of ours, that now, in the estimation of some of us, is so hopelessly swamped by the two or three billions of debt, or whatever it may be, the world will be improved and blessed; that from this country will emanate life and light, spreading in broad streams into every corner of the habitable globe, until, by God's kindness, it shall be purified, and blessed, and become the purest and the happiest of the innumerable spheres that whirl through infinite space around the throne of the Almighty. Mr. Chairman, I am full of hope; I have no fear whatever of the country. I say it now for fear I should be misunderstood—it is a time of trial; the condition of our country is such that we are bound, in justice to the people here in our State (and every State is bound), to use due prudence and economy, not to be wasteful and extravagant, but in my humble judgment, to abstain from those works and deeds which do not promise to add substantially to the resources or happiness of our people. Mr. Chairman, with regard to this report, I have no fault to find with the members of the Finance Committee for the conclusions (much as I regret them) at which they have arrived—no more than they have a right to complain of me for mine. What I do complain of is the coloring of this report. I do not think that it was intentional; I at once absolve the gentlemen of the committee from my heart of hearts; I absolve the gentleman from Orleans [Mr. Church] from every imputation of an intention to mislead. Why, he is the very essence of truth; he is a true, a noble and honorable gentleman; and I cannot account for the coloring of this report, except upon the theory that he has allowed terror to enter into his soul—that he has become cowed, that he has lost energy and hope, and so all his visions are unhealthy and discolored. I am not sure that I have given due attention to the whole of this debate, but my attention has been particularly called to the statements of the report

touching the financial condition of the State, and I will advert to them for a moment. In the first place, the report itself puts down the so-called debts which are charged upon the canals at \$21,407,682.22. Next to that we have what is called not a debt of the State, but a debt of the canals for advances to the canal debt sinking fund, etc., \$18,007,289.68. Now, in truth, that \$18,000,000, as has been repeatedly stated here, is no debt at all. The State's right-hand pocket owes the left-hand pocket \$18,000,000—that is all there is of that. In regard to this \$21,407,682.22, charged on the canals, they are probably proper debts, but are they not secured? Is there a possibility that they will not be paid? Now, what in strictness is really the debt of the State? I mean the present pressing debt of the State? There is the bounty debt, \$26,944,000; and strange as it may seem, the gentlemen of the Finance Committee retain this claim of \$18,000,000 due from one pocket to the other as what? Why, as a pretense for paying the bounty debt out of the revenue of the canals, and that is all there is of it. And what is this bounty debt itself? Let the gentleman call up that resolution which I placed on the table some month or so ago, asking Congress to assume it with the like debts of the other loyal States. Can there be any doubt about the action of Congress? Let him father it; let him press it upon the Convention and it will be passed; there is no doubt of it. This debt was incurred by the State in performing the duties of the general government. The general government will assume and pay it. When that government was in extremity and could not perform its duties, the State undertook to perform those duties, for the common defense, and in doing so incurred that debt; and I say I have no reasonable doubt that it is duty of the general government to assume that debt and the similar debts of all the loyal States. And what in Heaven's name does this report say? It says here is Michigan, Iowa, Illinois and Indiana, they are also burdened by similar debts. The report does not say that, but I believe that to be the fact. What does the report say to us, and to these sister States? It says: "We won't pay our bounty debt; we will not tax our State to pay it, but we will pay it by taxing your commerce." Yes, sir: we say to Indiana, Illinois, and the other Western States, the children of our loins, as it were, the offspring of the Erie canal and of those great improvements which sprang from and succeeded it, and whose industry is the basis of our greatness—we say to those States, we will make you pay that debt as well as your own. Let the United States pay this bounty debt. It belongs to them (Congress) to pay it, and it should be done. If I be right in these conclusions, what is the debt of the State, unprovided for? Why, it shrinks down to \$218,000. That is the contingent debt of the State. Now, then, what does this report do next? Why, it takes the direct taxation by the State—\$2,800,000 (I do not know whether the amounts are correct or not)—it takes the taxation of counties and towns, and sums them all up, and puts them down at \$22,000,000, and then it takes the taxation for the cities and villages—\$18,000,000,

and then it goes into Uncle Samuel's matters, and takes the whole amount of the internal revenue, and assumes that our proportion of it is one-fifth, and puts that down; and then it says the amount collected by the tariff was \$200,000,000 and puts us down as consumers of one-fifth of this \$56,000,000. And why, in Heaven's name, did not the honorable committee go farther, and put down our church taxes, and our private debts. They might with just as much reason as to put down some of these exaggerated items. And for what purpose? I will not say for what purpose: I do not know that there was any purpose, but it seems as though there were a hope to excite and use the influence of terror. And what is the next statement? That the annual taxation is an aggregate of \$180,981,398, "which is more than eleven per cent on the assessed valuation of property and equal to a tax of \$45 upon every man, woman and child in the State, and more than \$200 upon every voter." Now is there an object in this? If there be, it is so transparent, so perfectly transparent, that the people will view it with scorn. They know, sir, as well as you and I know (and the committee ought to have remembered it) that there is no *per capita* taxation in this country. They well know that all these taxes, whatever they may be, fall upon property and not upon the person. They know that the largest portion of these taxes are purely local or are taxes upon luxuries. And yet what does the committee mean by dragging in the statement that it equals a tax of \$45 upon every man, woman and child in the State. Is it the object of the committee to compel us to couple with our best blessings the weight of our worst cares?—to make what should be the purest elements of our happiness and strength the measure of our misery? Why, when the man, in his pleasant home, looks at the old wornout grandfather in the corner, or the grandmother, sitting in the rocking-chair, with her spectacles on and the Bible on her knee, is he to think of \$45 a year taxation? Is that the object? The man who draws his sweetheart to his bosom, in all honor, and kisses her, is he to be deterred from it by the fear of \$45 dollars a year? [Applause and laughter.] Is the father who goes to the bedside of his just delivered wife, and looks at her worn but happy countenance, and pulls down the little piece of muslin and looks at the red and puckered face of his first-born—"the perfect image of his father"—is he to think of \$45 a year taxation? [Laughter.] Now, Mr. Chairman, these may be all matters of mere taste; and if matters of mere taste, why, really, there would be nothing of them. But they are not matters of mere taste; they seem to have led this committee to its conclusions, and what are its conclusions? Oh! Mr. Chairman, Mr. Chairman, I had supposed that, when people were in difficulty, the great remedy was work. I had supposed, that when a man was pressed he should look everywhere for means to enhance the value of his property and to increase his revenue. No such thing with this report as I read it; it is a policy I object to; it is a policy—I will not say of stupidity—but it is a policy of inaction; it is a policy of stagnation; and that policy is death;

death to honor, destructive to all hopes of escape and of security. We must work, sir; and the State—I say it with perfect assurance of the correctness of my position—the State, the father of the people, must work, too. It cannot work by its own hands. If these hard times, which I acknowledge to exist, are upon us, I had thought, as a fundamental doctrine of policy, that it is the duty of the State within reasonable bounds so far as it can do it, to the advantage of its own property, to furnish labor. Why, who are the men, and who are the women, and who are the children that suffer most in such times as, if the Finance Committee is to be believed and as I fear is true, are upon us? Who suffer most? It is not the rich merchant, it is not the capitalist, or the manufacturer; it is the hardworking, driving man, who depends upon his labor for his daily bread, for the support of his wife, for the support of his family, for christian comforts. Does the gentleman from Orleans [Mr. Church] know the awful temptations of grinding poverty? And how contrary to true policy is the stand-still policy of this report? You will gain nothing in mere money by adopting it. You incur the danger of demoralizing your citizens; you fill your jails, your penitentiaries, your poor-houses; and in the end you find that, while you have weakened the State in the great element of manhood, you have gained nothing, even in money. I speak now, sir, with reference to this policy. Look at the Capitol. I am not saying what ought to be done. I reserve my opinion until the argument. The report says the Capitol must and shall be Albany, and that the Capitol shall be rebuilt, but that the rebuilding shall not be undertaken in these ten trying, troublous years, which, if the report is correct, may well wear down our workmen. It says what about the canals? It says the canals shall not be improved—not, at least, until \$39,414,971.90, with interest, have been extracted from its revenues; and in the mean time commerce may go to the dogs. Our people may suffer, surely, by this policy. The State will not escape taxation; it will gain nothing in money, and it will be overwhelmed with dishonor and with just diatribe. Let me ask the committee to remember that every stroke of the hammer and the axe, every push of the plane and of the saw, every barrow that is rolled across the plank, every hod that is carried full of mortar and of bricks, every stroke of work of every kind and name that will be applied upon the canals or upon this new Capitol, while it gives assurance of an honest living to numbers of our fellow-citizens, adds to the permanent value of the property of this noble State. There may be a distinction in these matters. In the one case the property is unproductive; in the other it is productive, richly productive. Now, Mr. Chairman, I have talked a great deal longer than I expected to. Let me now, if I can, briefly say some things to cheer—I say it in good faith—to cheer the Committee on Finances, if possible. They are reflections which cheered myself, and perhaps they may lead the committee to a cheerful abandonment of their policy. I refer to a fact, not that it is one which is to have any great immediate effect upon our prosperity; but there is such a thing as a regular depreciation of

money. Every gentleman knows that for many years, especially since the discovery of America, money has been sinking in value. It is a mere representative of value. True value is not in money; money merely represents value. Political economists take other things as the measure of value. They say that in the time of Henry IV or Henry VIII a bushel of wheat brought so much money; now it brings a great deal more. They say that wheat was worth in those times just as much as it is worth now, and therefore money has sunk in value. You look at the history of England. Time and time again, for more than a century past, it has been prophesied that, with the enormous debt weighing upon England, she must go down. And what has she done? She has gone on adding to her resources, to be sure, but she has gone on adding to her debt, and stands, financially at least, firmer than ever. And why is this so? It is in part, at least, because money has depreciated. Take a hundredth part of the debt of Great Britain at the present day. If you had imposed that upon Great Britain one hundred years ago it would have crushed her. I will not dwell upon these matters. There is the increased population to which I have adverted—this young muscle continually coming into life. Then there is this enormous immigration. Then there is this wondrous activity of our people, which is every day finding out something new and good, and working out new and profitable results. I do not wish to draw any flattering picture. I know that we are in times of difficulty, and that now, of all times, is a time for economy, but I tell you this country, instead of being in a state of suffering, is in a state of prosperity unexampled on the face of God's earth. That, at least, is my opinion. With reference to these canals, the question really before us, I have but a few words to say. I was very much surprised when it was said there was no necessity for any improvement of them. While that is a subject for the consideration of the Convention, and one that has been fully debated, I do not see how I can possibly add to the argument; but I do believe in my heart of hearts that the time has fully come when the canals should be improved. I was very much pleased—I was about to say delighted, and I will say so still—with what struck me as the noble, manly, eloquent, calm speech of my friend the gentleman from Onondaga [Mr. Andrews]. It was a glorious, noble speech, though he came to a different conclusion from mine. I think he is wrong, and I think so in part for these reasons, which, perhaps, did not occur to him. It may be, as he claims, that the Erie canal can pass eastward, with due facility, all the property that seeks it. It seems to me that he draws his conclusions simply from the fact that there was a possibility, even in the most crowded seasons of navigation, to lock through all products of the North-west eastward which were upon the canal at the time. Now, for the sake of argument, I would grant that, and then I would ask the gentleman to consider two things. In the first place, to consider whether or no business is driven from the canal by the fear that it will not be transported on it in proper time. I may be mistaken; I am not a

financier, and I am not familiar with commercial matters, but I do know this fact at the outset—that the canals, according to common report, are clogged in the fall at this particular point (Syracuse). And I think I know, in addition to that, that from that cause, and, if you please, from the additional fact that some delays are occasioned by the want of capacity to press the property forward, and that some property has been occasionally left on the line of the canal at some intermediate place, I will say that, in my opinion, the natural effect of these causes is to deter from the canal, property that would otherwise take it, but the owners of which are afraid to intrust it to the canal. I believe that the gentleman will find on inquiry that vast amounts of property are stopped at Buffalo in the late autumn, and, in consequence of these apprehensions, take the railroad, or remain there through the winter, and are sent on some other way. The gentleman has within him the elements of a statesman, if he be not a statesman; and I ask him if it is not the part of statesmanship to court commerce and anticipate its growth. I ask him to look at the field (he knows as much or more about it than I do), and tell me whether, in his sober judgment, a true statesman would not, to some extent, at least in these times, go on and improve the canals, upon the ground that it would be a public blessing, and add to the revenues of the State, that it would attract thither the produce of the ever extending agriculture of the West; that it would stimulate the industry, and add new vigor to the productive powers of the West. Gentlemen say there is no danger of a diversion of the commerce of the West. I do not know about that, Mr. Chairman! I do not know about that. I look at the great Western States—as I have said, the children of the Erie canal—and what do I see? I say nothing of that rich country, that has been talked over enough; but I look at the people. They too are, many of them, the children of New York loins. They are as good a people as we are. They are, if anything, even more active and energetic than we are. They feel their wants. They have been up almost in arms about this matter. Tell me that that people will lie there in quiet for a number of years—until you raise thirty-nine millions and interest from the revenues of the present canals! No, sir, there is energy enough in the mighty people of the West to divert that golden commerce, in part at least; I pray there may not be the will, but the will must exist, and have its way too, if New York shows no disposition to subserve the interests of the West, as well as her own interest, as she is bound to do, by improving her canals. There is a disposition, there will be a will, and there is a power, say what we will, to adopt the upper portion of the Ohio, and hew a water-path through the lower spurs of the Alleghanies into Virginia; and there is a power to hew around the Falls of Niagara and get an outlet to Portland, or through the St. Lawrence to the ocean. I pray that you will not look lightly upon this matter, that you will weigh it well, that you will consider it, and that you will do something, whatever it may be, to give us a new claim upon the glorious West, and to fulfill the promise which we so often have held

out to her—to vindicate our word, to heighten our honor, and to add to the tide of the material prosperity of this great State. One other little observation—if I am not exceeding my time. I am a little apprehensive that some of their friends localize too much the benefits of our canals. The Erie canal and the other canals, when they were first completed, did not immediately benefit the remoter sections of the State. I am well aware of that. They did not benefit, perhaps, immediately, Cattaraugus county, nor the county of Suffolk or Delaware, nor divers counties on our northern frontier—counties which are just as dear to me as the county of Erie. But I ask these gentlemen to consider this—just to cast their eyes back and consider what the condition of these counties was at the time of the completion of the Erie canal, and now look at their present condition. Why, they are smiling, happy counties. They have not drawn so largely, perhaps, upon this great avenue of commerce for capital; but they have been benefited by it, largely benefited by it. In my humble judgment—I may be wrong, but it seems to me that the wealth which is poured in by these water communications, and which accumulate as capital in New York city, and in the cities and villages along the line of the canal, and the general prosperity of the country along the line of the canals created by them, have all tended and are still tending to build up the remoter portions of the State. The success of the Erie and Champlain canals gave birth to other improvements, and their success gave confidence to foreign capitalists and our own, and led to the construction of railroads—railroads which are such important instruments of commerce and are doing so much good. Riches are accumulated by individuals and States, and they diffuse them. Directly and indirectly our canals are energizing industry in every section of the State; they are building up villages everywhere, and creating or enlarging local markets everywhere; there is not a part of the State which does not feel their invigorating influence. Even the John Brown tract has felt it. Suffolk feels it in the great markets she now enjoys; and there is not a portion of the State which has not been and is not benefited and blessed by these canals. One more remark which I ought to have made to my good friend from Onondaga [Mr. Andrews]. I do not know how the fact is; I have not been well, and I have not had energy enough to examine the records; but I would ask him to look at the times when the Erie canal was substantially enlarged in any way, whether by an enlargement of the prism or an enlargement of the locks, and inquire whether or no, at any one of those particular times, the same cry which has been heard here was not heard then in opposition to those plans of enlargement—that the capacity of the canal was not exhausted. I ask him (whether the capacity was exhausted or not) whether each and every of these improvements has not tended to build up commerce and add to the wealth and glory of the State of New York? One word more and I will no longer trespass upon the patience of the committee. I am not a practical man, but the plan of improvement which is included in the report of the Committee on Canals

(of which I am a member) seemed to me sound. It still meets with my approbation. I was not, in the committee, fully satisfied as to the policy of constitutionalizing any plan of improvement, but I did not suggest the doubt in the committee—I was not then settled in the conviction which comes home to my mind most strongly since I have heard this debate. I have weighed what has been said; I know that I have been candid and fair; I am not wedded to any particular project. I distrust now the policy of ingrafting in the Constitution or fundamental law any particular plan, or of fixing any time of enlargement. My best impression is that it is better to leave the whole matter to the Legislature. I came to that conclusion from the argument. I am prepared, for one, to abandon the report so far as the particular plan or time of improvement is concerned. Let me say one word more (I fear that I may weary you), for it is in my mind. I dislike the policy of this report for another reason, a reason of deeper policy. This report binds up the Legislature too much. Why, sir, it is but a little further following out of the policy of 1846—of the financial article of the Constitution of 1846, I mean—than which a greater mistake was never made by sensible, patriotic men, such as sat in that Convention. Sir, they bound up the people in this very matter of the canals and of finances, until the people, from sheer necessity, broke those bonds asunder. Shall we bind this Sampson, the great, glorious people of New York? Shall we persuade him to lay his honored head again in Delilah's lap? Shall he be bound again? Heaven forbid! Now, what was the political consequence? I say it boldly—I may be mistaken, sir. That Constitution being framed, the cry was, "You have got a perfect Constitution, people, look to that; that is all you want. It has tied up the Legislature so that it cannot by any possibility infringe upon your rights or flitch away your liberties; it cannot squander your property." The Legislature was degraded. From time to time it kept growing worse and worse, according to all report, until, in public estimation, it has become, indeed, in this our day, the most corrupt legislative body in the world. Report exhibits it as full of small, mean men, mousing over schemes of public plunder and of personal aggrandizement. That is the amount of the talk; if it be true, you may thank your Constitution of 1846 for it. You may thank it for this reason—because its friends and framers taught the people by it to undervalue the legislative function, to forget a great maxim, and dispense with caution. The people were told: "You have a perfect Constitution, a talisman which will protect you. Send anybody you please, it is of no consequence." They forgot that "Eternal vigilance is the price of liberty." Give your Legislature power—its members are people; they are the agents of the combined people; give them power and dignify their office. Let them know that they are responsible, and that they are watched; and then, O, people! if you have not sense enough to select proper men, they have sense enough—there is no question about it. When they feel that the Legislature is an exalted body—that its functions are exalted, that their

vital interests and their own dignity are involved in the discharge of those functions, they will select their best men, their honest, their strong and incorruptible men; and they will say to them: "We trust these matters to you; do them, and do them well, for our eye is upon you, and if you fail, you shall be disgraced and punished." I thank the committee for the patience with which they have listened to me.

Mr. LUDINGTON—Mr Chairman, I rise at this late hour in the discussion of the question before the committee, not for the purpose of making confusion worse confounded by going into a statistical examination of the various points involved in it, for these difficult, abstruse, and, to the casual hearer, uninteresting details have been more fully considered, and presented and by far more experienced heads; but to indulge in a few general—to me, and I hope to the committee, not wholly uninteresting observations. Sir, it will not be denied that amid all the diversified interests of society, all the functions of government, that of finance and expenditure has ever been, and ever will be, the subject of paramount solicitude and care. Whether in proud Britain, in restive France, in spiritual Germany, in brave old Norway and Sweden, in imperial Russia, in feverish Italy, languishing Spain, or bleeding Mexico, questions of finance are at this moment of absorbing public interest. It is also beditting this occasion, as well as all others of a deliberative character in our country, that we too, should pay special regard to this vital controlling subject. But, sir, while I throw out this suggestion I do not wish to be regarded as an alarmist respecting the present or future pressure of our national debt, which has been so skillfully magnified by the Finance Committee, and newspaper sensationists, as well as honorable gentlemen on this floor. Sir, instead of regarding it, large as it is, as a source of national weakness and industrial depletion, I esteem it as the essence of national faith and as an additional bond of union. It will hardly be denied that the investment in government securities, during the progress of our late civil war, by capitalists in sympathy with the rebellion, wrung from them a support in favor of the success of the Union cause which had hitherto been withheld and would not otherwise have been yielded. They well knowing that if we failed federal securities would go down and confederates go up. No nation in modern times has been able to carry on a protracted war upon a purely specie basis or circulation, much less could ours, as in times of peace specie was merely a fictitious basis while paper was the circulating medium. Our currency necessarily became largely inflated, the price of labor, the products of the shop, the manufactory and of the field rose to enormously inflated values, which enabled all who had contracted debts, when the volume of circulation was small and specie at par, to discharge their indebtedness in full, and find a balance of ready money in hand to invest in the securities of the nation's integrity and patriotism. Investors in private securities, such as bonds, mortgages, contracts, notes, judgments, etc., had their capital returned to them, and

who found no other safe or convenient means of investment than in these national pledges. So that when that Titanic conflict, which had for four long years rocked our continent from sea to sea, closed in triumph and glory upon us, the people owed less money by thousands of millions than at any former period of our history. Private obligations were converted into public ones, private capital, upon which the people had been paying from six to twelve per centum per annum, was loaned to our government by all classes of our citizens, in sums of from fifty dollars and upward at lesser rates of interest, and which is paid by those only who have a net annual income exceeding one thousand dollars. Sir, it would thus seem that instead of the general government oppressing the people with the burdens complained of, it has, by its financial policy, enabled them to pay all their oppressive, private debts, while a national debt has been contracted from which the poor are exempt. But it will be said the people are charged with the payment of this great national debt. So they are; but it will be seen by the monthly statements of the secretary of the treasury that from our income tax and public revenues, as at present adjusted by law, we are enabled to meet the expenses of government, pay all accruing interest, and reduce the principal upon a ratio which would in twenty years pay the entire national debt. But, sir, suppose the payment of principal should be postponed till its maturity: what will then be our condition? A population doubled, and taxable property more than quadrupled, so that its payment at that distant period, if met by taxation, would be no more burdensome to the people than one-quarter of the amount if paid at this time. Our country is yet in her infancy; but it is a giant infancy, giving promise of a physical development, a maturity of strength, a comprehensiveness of thought, that shall dwarf all the nations of antiquity, and stand out in all future time the noblest and grandest display in popular government of God's power and providence through the unswerving virtues and uncontrollable energies of his creatures. In short, our national debt will neither be repudiated or outlawed, nor will its payment be felt in the outgrowth of our strength and in our increased ability to meet it. So much, sir, in view of our national finances. I should rejoice if this flattering picture could be transferred to the State of New York. Our State debt, in round numbers, is \$50,000,000, to which may be safely added local bounty debts of \$50,000,000 more, being equal to \$25 *per capita* for every man, woman and child in the State. According to the assessed valuation of the property of the State, in 1866 every \$100 of taxable property is chargeable with \$16 to meet the principal of this debt. In many towns and counties the ratio of liability will be much greater, depending upon the extent of their local bounty debt. Both the interest and principal of this large indebtedness, equal to one-sixteenth of the estimated value of the taxable property of the State, must be met by taxation upon the people, if the incomes from our canals are diverted to works of further improvement and enlargement. They will not be met by assessments upon the incomes of the forehanded and the wealthy,

as is provided for our national debts; but they must be drawn from the poor as well as the rich. Now, sir, the chief item of this large State debt is our canal debt, which will amount, principal and interest, at maturity to \$21,569,278.75, the principal being \$15,765,060, \$170,000 of which is past due and drawing no interest. The balance falls due as follows: \$247,900, October 1, 1868; \$57,000, January 1, 1871, \$2,800,000 July 1, 1872; \$1,000,000, January 1, 1873; \$2,750,000, July 1, 1873; \$2,250,000, November 1, 1873; \$3,000,000, January 1, 1874; \$2,250,000, October 1, 1874; \$500,000, October 1, 1875; and \$900,000 October 1, 1877. To meet the payment of this debt, and interest, the surplus revenues of our canals are pledged by the Constitution of 1846, and which pledges we must renew. To the above principal sum of \$15,765,060, should be added \$5,636,622.22, which was the general fund debt of 1846, and which has priority of payment out of canal revenues to the above canal debt, except as to \$3,257,900 which was what remained of the canal debt of 1846. Making the aggregate of both debts \$21,401,682.22, besides interest which must be paid, with the interest, by December 1, 1877. The question seems to be whether the surplus canal revenues shall be sacredly held to meet these accruing canal debts promptly when due, regardless of canal enlargement schemes, which the Committee on Canals contemplate, or whether the State shall again enter upon a further enlargement of our canals, in anticipation of the surplus revenues being sufficient to meet both the accruing canal debt and the expenses of enlargement, and in case of the insufficiency, to make further loans or resort to taxation to meet deficiencies and preserve the public faith. Now, sir, after mature reflection, with no natural hostility toward the canals of our State, but with a greater regard for the interests and honor of the whole people than I should have for those immediately interested in the enlargement policy, I prefer that part of the report of the majority Committee on Finances which provides a sure, certain, adequate and legitimate means for the payment in full of this old, exciting and quarrelsome canal debt, to the uncertain and complicated mode recommended by the Committee on Canals, with canal enlargement as the real objective point. Sir, as many democrats have wisely expressed themselves that they think it quite time that the "nigger" should be out of politics, so I, as an old whig and republican, am ready to exclaim that it is time that this canal debt was out of the politics of the State. It has been the scourge of my party, if not of the people, in my section of the State for the past twenty years. I am opposed, and I believe I express the sentiments of a large majority of the people of this State, to devoting one dollar of the surplus revenues from our canals, or to making loans, or taxing the people for the purpose of enlarging any of our canals until our canal debt shall be paid in full. Sir, I would be the more willing to entertain the proposition of the Canal Committee if I believed that there was any present or remote necessity for such enlargement. That the disbursing of so large an amount of money as would be required for the enlargement, along the line of operations, would stimulate busi-

ness and industrial activity, and be the source of profit and wealth, I cannot doubt; and this, in my judgment, would be the extent of benefits to localities or the State. The honest men living along the noble valley of the Mohawk should be satisfied with benefits and blessings already received from this source, while the inscrutable Avenger of crime knows that their robbers have no reason to complain. Sir, when I came to take my seat in this body, my constituents anticipated that the great questions respecting our canals would be as to whether they should be sold or leased, and the State relieved from the cares, anxieties and fluctuations of business life; so you can well imagine what must be their surprise when the question seems to be, shall they be enlarged at an expense of from \$10,000,000 to \$15,000,000. The public necessity, the pride and honor of the State demanded the construction of many of these public works, and the people and the State, under the guidance of the peerless Clinton, whose very name I feel proud to bear, nobly, wisely, and generously yielding to the demand. Their results in the material development of the State, are above estimate, and beyond all appreciation. Too much honor cannot be paid to the memory of their illustrious author. Sir, when I take a panoramic view of that cordon of flourishing cities and villages lying between the Hudson and the lakes, those outstretching fields of green, and waving acres of corn, those orchards bending under their weight of ripening fruit, while the music of the reaper the mower, the clicking hammer, and the humming wheel of the shop and the manufactory lend enchantment to my ear, I instinctively exclaim, "Great was the genius of Clinton." Would it not be an appropriate and touching thought that should prompt the occupants of those peaceful and happy homes along those rivers of art, to set apart the anniversary of the completion of the Erie canal for wreathing with flowers the grave of that noble man. Mother nature would appreciate the holy motive, and each returning spring, with noiseless footsteps would come with her fairest flowers to the shrine of his sacred memory.

"Weed clean his grave, ye men of genius, for he was your brother;
Tread lightly on his ashes, ye men of science, for he was your friend."

When their enlargement, in 1854, was demanded the people again yielded their assent, and now, before the work is hardly completed, another demand is made for still further enlargement. As long as there is money in these schemes the cry for enlargement will never cease. But this last call will not be answered by the people of the State, if it is by this Convention. Why, sir, if they believed the exigencies of commerce and their own prosperity required it, they would not in this infected state of the public morality be willing to intrust the expenditure of the millions requisite to the consummation of so stupendous an enterprise into unapproved hands. They would insist upon waiting until our whole canal system of management had been purged of corrupt officials and dishonest favorites — until experience should assure them that this

large amount of money would fall into responsible hands and be faithfully and honestly disbursed. I do not propose to discuss the question of the present capacity of the canals to meet the probable or possible wants of the future in detail. It is sufficient for me to know that gentlemen of approved engineering skill and of extensive knowledge and experience respecting these questions differ in opinion, and while such difference exists, it is not, in my judgment, expedient to embark in so expensive and doubtful an undertaking. Why so much haste when there is so much darkness before our eyes and so many conflicting theories which future experience can only settle? To that settlement I shall cheerfully submit. I have my convictions on the subject. Sir, who can now fix the day when the canal shall say to its customers "Go elsewhere with your freight; I cannot carry it for I have not the capacity." When that day comes, then it will be early enough to talk of enlargement. It is not denied that the canal auditor, in several reports to the Legislature, has shown and maintained that the present capacity of the Erie canal is capable of transporting 4,000,000 tons each way annually, while the most that it ever bore on its bosom one way in any one year was 2,916,094 tons in the exceptional year of 1862, when our southern outlets for the West were blockaded by rebels. While I do not believe the Erie canal and its paying auxiliaries have fulfilled their mission of benefits to the people, I can not doubt that they lose their importance in proportion to the increase of facilities opened to commerce by railroads and steam, an agency which their wise and far-sighted authors did not anticipate. Sir, grateful as I feel to these internal water-ways of commerce for what they have accomplished in human progress, and as enduring as my hope is of their future usefulness, from all the rivalries in transportation which now exist, and which the capital and enterprise of the people will yet suggest to meet the growing wants of trade and traffic, I cannot doubt that their present capacity, so far as width of lock and prism are concerned, will be found equal to all future demands. The trade and products of Ohio were the subject of Gov. Clinton's desire when he projected the Erie canal, as will be seen from his messages delivered to the Legislature, it being at that time the only State formed out of the North-west Territory. For many years her tonnage over the Erie canal exceeded all the other Western States and Territories, and now she furnishes the least of any Western State, she having become the chief consumer of her own products, except live stock, which are forwarded to eastern markets by rail. So it will be, to a greater or less extent, with all the fast populating States of the West. The man is now full grown and listening to this discussion who will live to see Illinois the most populous State in the Union, when and even before she reaches that point of success, every cereal from her prolific soil will be required to feed her own millions of freemen. This is a natural law, and confined to no State or locality. The honorable gentleman from Onondaga [Mr. Alvord] admitted, in his well-considered argument, the best perhaps that human skill can make in support of the report of the

Committee on Canals, that all the agricultural products produced along the line of the Erie canal are now consumed by her manufacturers and others on her line. The gentleman, in admitting this fact, strengthened my theory. Those very artificial waters were once freighted with the products of Central and Western New York, seeking a market at the sea-board. Neither, as he further admits, do the forests along their line continue to yield their wealth of freight, for they have long since been wafted to market over her munificent bosom, yielding rich rewards to their sturdy owners, and adding to the beauty and wealth of the State. So, too, have the lands of this portion of our State yielded to their creative and utilizing influences, and, under the industry and skill of the farmer, reached their highest degree of chemical combination and production. It will thus be seen that the canals of our State have already accomplished what the act of 1817 contemplated in the use of the language, "they will promote agriculture, manufactures and commerce, mitigate the calamities of war, enhance the blessings of peace, consolidate the Union, advance the prosperity and elevate the character of the United States." Sir, even this great canal is no longer capable of any further material development in our State, for, with the aid of the Central railroad running the whole length of it, the startling fact is presented that the aggregate valuation of all the real and personal property of the counties through which they pass, is less by \$12,440,794, than it was in 1856, or ten years ago. And if we leave out the county of Albany, which owes her prosperity in a great degree to other influences, it would amount to \$19,032,974, while several of these counties are valued less than they were fifteen years ago—as for example, Montgomery, Herkimer and Niagara. Why, sir, not even all the salt of Onondaga and her great canal financier, do not save her from the mortification and disgrace of showing a reduction in her valuation of \$3,068,577 below what it was in 1856, while Ontario, the honored home of the chairman of the Canal Committee, finds herself in the "slough of despond" and poorer by \$3,344,436 than in 1856. Sir, if the honorable chairman [Mr. Lopham] believes that the enlargement of the Erie canal will add to her wealth what she has lost in the past ten years, and increase her population to what it was in 1850, I don't wonder at his pleading "trumpet-tongued against the deep damnation of their taking off." My other honorable friend from Ontario [Mr. McDonald] some days since, probably through an inadvertence sometimes inspired by the heat of debate, referred to the county of Orange, which I have the honor in part to represent, as a county "unsafe for people to visit." Without the liberalizing or christianizing influence of canals; she has advanced in wealth about \$3,000,000 in the last ten years, while her population has increased over 13,000 since 1850. I know it may be said that many other counties in the rural district, as for instance, my own, also, show a falling off in their valuation during the same period. But, sir, it will be borne in mind that they are counties not favored by the State or blessed with railroads

or canal—counties which, in view of the reductions complained of, have purposely reduced their valuations in order to avoid, as far as possible, the payment of an unequal proportion of State taxes. Sir, the great wisdom and well-disciplined mind of De Witt Clinton, did not run wholly on canals as a means of opening the country to settlement, encouraging industrial pursuits, and of promoting the wealth, convenience and happiness of the people; but only as one of those means. In his message to the Legislature in 1819, he said "as the prosperity of agriculture is essentially connected with easy and cheap means of transportation, by land or by water, it cannot escape your attention. All roads leading to navigable rivers and lakes, to cities, towns and villages to manufacturing establishments and depositories of produce and merchandise are entitled to your countenance; and in places of a different description, where a thin and commencing population prevents the extensive and useful application of individual exertions, there is every inducement on your part to encourage the growth, and settlement of the country by opening the means of communication. The improvement of old and the creation of new roads is at all times an incumbent duty and a beneficial exercise of power." Applying these benign principles to our present wants, and unequal means of development, instead of lavishing its whole patrimony on our canals to accommodate western commerce with our sea-board, it would be wiser, more economical and more certain of lasting benefits to the State, while the wants of the West would be better subserved if it would continue to aid the construction of certain railroads, now in contemplation. If the State would take hold and aid in the construction of the New York and Oswego Midland railroad, making it another connecting link between New York and the Lakes, which recent surveys have found to be perfectly practicable, the \$80,000,000 of taxable property on its line would not recede in value \$19,000,000 in the next ten years, but would be enhanced more than one hundred per cent. Such a work would be of infinitely more importance to the city of New York, to the localities immediately affected by it, to the State at large and to the wants of the great North-west than any expenditure equal to its entire cost in enlarging our canals could possibly be. But no, these enterprising Committees on Canals and Finance, and some other committees as well, all unite in shutting the door of the treasury against any appropriation of money for railroads. Such a policy evidently assumes that the State of New York is fully grown, thoroughly developed and entirely finished, as respects all such agencies. Sir, the island of Great Britain has within its borders 2,200 miles of canals, all of which were built before railroads were introduced. In 1755 the Duke of Bridgewater projected the first one, connecting Manchester with Woolsey. So complete and extended did her system of canals become, that it is said that there was not one foot of land on her entire island south of Durham that was more than fifteen miles from water communication. Railroads have superseded the use of most of them. Only heavy, cumbersome articles are transported on them. I do not believe that the

Erie canal, from the character of its connections, is liable to be wholly superseded by railroads, no more than railroads can supersede the ship-canal, fifty-one miles in length, connecting the river Y with the German ocean, and to which the city of Amsterdam owes its prosperity. Canals are among the most ancient devices for commerce known. The Italian States gave early attention to the subject of canals. Her Leonardo de Vinci first introduced locks on the Milanese canal in 1447. Great Britain was the last country in Europe to introduce them, and the first one to abandon them under the more energetic influence of steam and the rail. Why are not canals now built to promote the interests of commerce, while thousands of miles of railroads are constructed every year? If it is no longer wise to build canals for the transit of commodities, how much wiser is it to enlarge those already built? That sort of commerce that moves at the rate of a mile in an hour and a half will not grow in public favor—time is money. Why, sir, a railroad will build a village while a cargo is going from Buffalo to New York by canal. The merchant at Chicago and Buffalo, who has his grain, flour or pork, with a doubtful or falling market ahead of him, will not give it a fifteen days' transit when he can realize on it in two days by rail. While the market was rising, the canal would still have no advantage over the railroad. If railroad now in use had the capacity needed, the tonnage on the Erie canal would be greatly lessened. When the general government or the people establish their freight lines by railroad, as now contemplated by Mr. Harlan's bill in Congress, no canal enlargement schemes will then be agitated. Sir, I mean simply to argue that such is the force and popularity of the railroad system as a means of rapid transportation of both passengers and freight, having the whole year to operate in, that I do not believe that many new canals will be constructed or enlarged in this or any other country, and that it is not advisable at present to enter on any scheme of enlarging ours, especially under what I claim to be the discreditable plan suggested by the Canal Committee. Sir, we must pay our debts before we build expensive State Capitols endow all our private sectarian institutions or enlarge our canals, and especially before our people are convinced that the utmost capacity of our canals has been reached. I have ever been the friend of the Erie, Champlain, Oswego, and all other canals which have not been a source of constant evil and expense to the State. And I don't mean to pledge myself against the improvement or enlargement of one of them at the proper time, when such improvement may be necessary to meet the increased demands of commerce, after their present capacity, with the most approved economy of labor and skill, shall have been found to be inadequate either to meet the wants of our own people or those of other States or countries who desire to pass the product of their industry over them, and, above all, when such improvements can be made without tax or inconvenience to our people. Sir, I do not desire to see this great State, which at such an early day of her history, inaugurated a wise and liberal system of internal improvements, and whose practical op-

eration has given us our acknowledged supremacy in all the elements which constitute a truly great, enlightened and powerful Commonwealth, now turn her back upon her father and deny her paternity. I hope, sir, that this State does not feel admonished by such a glorious experience of the beneficent workings of such a policy as to prohibit, by her organic law, any further appropriations, or encouragement to railroads, and other means for enlarging our wealth, increasing our productions, equalizing public benefits, and promoting the general welfare. There are large, and naturally productive sections of our State, whose people have from time to time contributed their means, under the stern commands of our tax laws, to build up and foster other sections of the State, without direct benefits to their localities, who are now by constitutional law, to be denied in all future years from claiming any participation in the aggregated bounty and wealth of this great State, which their unaided industry has contributed to create. Sir, it will be well for this Convention to take note that our work here will be in vain, unless based upon the principles of public justice, and ratified by the people. While it is a work of reciprocal responsibilities and burdens, it should and must be one of reciprocal protection and benefits. Our great Father dispenses his seasons, his rains and sunshine upon all his creatures alike; so he teaches us the sublime virtue of doing unto others as we would have others do unto us. It is equally becoming the State to act upon this divine principle by which local jealousies will be removed, friendships cemented, the bonds of social and fraternal affection strengthened, commercial interests united, and the general happiness of the whole people secured to us and perpetuated to a grateful posterity, who, when they look back upon our deeds, will honor us as we honor our fathers.

Mr. MAGEE—It will be recollected that on the presentation of the report of the Canal Committee, I dissented from some portions of it and said I would at the proper time state the reasons why I dissented. I will now proceed to perform that duty. I accepted a seat in this body impressed with the belief that the capacity of our canals was not adequate to the demands of commerce upon them. I had learned by sad experience as a shipper, that there was fault somewhere, and in common with the majority of the committee, I had accepted the theory of insufficient capacity, and was disposed to favor enlargement so far as I could do so without infringement upon the provisions of the present Constitution, or the danger of increasing State debt and taxation. I have examined the subject carefully and find that I was mistaken; that I had allowed myself to be deceived by the general cry along the canals for enlarged locks, larger boats, and of course more water. Sir, I am convinced, by the light I have obtained from examination, that we have canals enough to meet the present and future demands of commerce for years to come. What we need is competent, honest management by men selected for their practical business capacity, and not from political considerations. If we can inaugurate a policy which will secure this result, we will have

accomplished a good work. The report proceeds upon the hypothesis that enlargement can be commenced and carried to completion by the application of present means and accruing surplus revenues, and assumes that the Legislature will, at its next session, authorize immediate commencement of the work. Mr. Chairman, it was my lot to have been born in the latter part of the last century, carried in infancy to the frontier of a new country, and in early boyhood removed farther west to the wilds of the then North-west Territory, where there were no schools within my reach. I have, therefore, not been taught the science of mathematics or the intricacies of arithmetic. What I have is intuitive, the gift of God. Such as it is, I have found useful to myself and fellowmen. Laboring under the embarrassment mentioned, I shall proceed, with diffidence, to criticize the figures and deductions presented in the latter part of the report of the Committee on Canals, commencing on page 19, etc., where it is assumed that we had a current cash balance in the treasury on the first day of May, 1867, of \$2,010,734.35, and interest to January 1, 1868, \$53,619.58, making on that day the sum of \$2,064,353.93. The report then proceeds to take the estimated surplus canal revenues of 1867, after paying the interest on canal debt from April, 1867, to July 1, 1868, and interest on the general fund debt to January 1, 1868, \$1,912,118.31, and finds a balance in the treasury on that day of \$3,976,472.24. I doubt if anything like such a sum will be found there. The report adds interest one year at four per cent, \$159,058.89, and appropriates surplus canal revenues of 1868, \$1,510,649.15, making an aggregate balance, January, 1869, of \$5,696,180.28. It then adds interest at four per cent for one year, \$225,847.21, and the estimated balance of canal revenues of 1869, \$1,772,286.75, and finds a balance, January 1, 1870, of \$7,644,314.24. It then appropriates for canals, as before stated in the report, \$6,644,314.24, leaving \$1,000,000 to pay canal and general fund debts. The report proceeds upon the same fanciful hypothesis to January 1, 1870, when we have enlarged our canals, secured free transportation for commerce, and find a snug little balance of \$431,890.26 to commence business on. If the theory of the report and the figures presented can be relied upon, it presents a pleasant picture and prosperous future. But, Mr. Chairman, the whole thing is fallacious, unsound and deceptive. I do not intend to impute to my associates on the committee duplicity or intention to deceive, but that their desire for improvement and progress has led them to erroneous conclusions. Allow me, sir, to go back for a moment and ask the honorable chairman how we can anticipate the accumulation of interest upon moneys which are not invested but in process of daily expenditure? I find two items of interest—\$159,058.89 and \$225,847.21, making \$384,906.10, estimated available funds applicable to the proposed enterprise. I confess I am unable to comprehend this scientific mode of computation, and ask to be enlightened. The sum of \$6,644,000 is estimated to be necessary to meet the cost of the contemplated enlargement; and

this is to be abstracted from the funds sacredly pledged by the Constitution to meet our existing obligations. Why, Mr. Chairman, five times six millions in my judgment based on the experience of the past, will not be sufficient to meet the last monthly estimate for the work contemplated by this report. I am not a prophet or the son of a prophet, yet I am willing and desire to go upon the record with these predictions, and trust to history to justify their correctness, if the work contemplated shall be commenced, as it is put forth in the argument to support the theory of the eminent necessity for immediate commencement, that, if delayed, other channels will be opened to compete for the commerce of the West, and that New York, our great commercial center, may lose its supremacy. Sir, I have no fears on that score. New York has attained to a position of commercial supremacy which cannot be diverted by rival competing routes. Let the people of Virginia construct a canal through the valleys of Kanawha and the James river from the Ohio to the Atlantic. I think the route is feasible, and I would rejoice to see it opened. The inhabitants of that section are our brethren. We should not desire to impede their commercial progress and prosperity. Another phantom is put forth to alarm us. Our Canadian neighbors have a feasible route from Lake Huron through the Ottawa river, which will be opened and become a dangerous competitor to our progress if we delay the contemplated enlargement of our canals, and offer free transit for the commerce of the West. Sir, these predictions do not disturb my nerves. Our Canadian neighbors are a part of God's people, entitled to all the commercial advantages and facilities presented to them by their natural position. It does not become us to embarrass or delay their progress. If I had the power, I would remove all commercial restrictions between Canada and the States. They need our products—we need theirs. I would establish free intercourse, social and commercial, with those people, and cultivate friendly relations with them. We inhabit the same continent, we have a common history. Why should we permit petty jealousies to retard the progress of either? Mr. Chairman, I am not an annexationist, I would not annex these people to our States. We have already more territory, more people, than can be governed and guided in the right way. Mr. Chairman, do you suppose that the six millions suggested for enlargement will satisfy the insatiate desire of conspirators, such as are portrayed by the testimony taken before the Senate Committee, document No. 40, now upon our tables? I have examined the testimony with care, and retired from its perusal with loathing. Conspiracy, larceny, forgery, perjury, official and individual, are but too clearly portrayed on most of its pages. I form my judgment upon the testimony of the parties charged with maladministration. When I am arraigned for official delinquency and refuse to answer before the proper tribunal, resorting to my legal rights, I give a *cognovit* and admit the right to adjudge me guilty of the offense charged. Sir, in my estimation, the highwayman who boldly de-

mands your purse is a gentleman compared with the sneaking official thief who asks and obtains your confidence that he may plunder your treasury. It affords me no pleasure to contemplate and comment thus harshly upon the delinquencies of my fellow men. Alas! the impure atmosphere about public departments and political associations appear to demoralize and seduce men from the paths of rectitude. Mr. Chairman, we have heard a good deal of grandiloquent declamation on the subject of inherent rights, free suffrage and the universal ballot. It may tickle the ears of the careless and indifferent, and perhaps secure votes when we desire office, but I regard the doctrine as unsound and dangerous to our country. I know that aspirants for place and patronage would not be likely to give utterance to such opinions. Nevertheless, what I have said is true. Having said thus much, allow me to explain my creed. It is that every male citizen of the age of twenty-one years, irrespective of nationality or color, who is a citizen in fact and has a locality and place of abode, who seeks to support himself and improve his condition by honest employment, and pays a small tax to support the government that gives him protection, should enjoy the right of the ballot with all the immunities of a citizen, taking the tax roll marked "paid" for the registry. All others, I claim, have no interest in fact in the government or the advancement and prosperity of the country and should not be allowed the privilege of suffrage. I believe that you and every member of the committee will mentally accept this platform, though you may shrink from the open avowal of it. Aspirations for and love of office have a weakening effect upon our independence. Why, Mr. Chairman, I believe and boldly assert that all men with rare exceptions, desire political advancement for themselves or friends. Does any gentleman dissent from this position? If so, he will oblige me by rising. I should like to look upon the man who does not desire office. If we could unite, assume and act up to our manhood, exercising our honest judgments irrespective of party considerations, we should adopt this platform, and secure a lasting blessing upon all men, and perpetuity to our republican government. Will we do it? I fear not; the degrading slavery to party dominion and hope of office will, I fear, defeat all efforts in the right direction. Sir, I repeat the opinion which I have before expressed, that we have canals enough, if officered by competent agents, practical honest men, to manage them. If we can inaugurate a system which will secure this end, we will have accomplished a good work. To this end a proposition has been submitted, which contemplates the abolition of the present defective machinery, which has no responsible head and works loosely and inharmoniously. The results are embarrassing to shippers and freighters with a depleted treasury. If this proposition shall be adopted, I can hope for improvement, though my faith is rather weak because the mode of selecting our public agents is not calculated to secure the services of the most competent men. It suggests one responsible head, denominated the superintendent of public works, with power, and four assistants to be appointed by the Governor and

Senate, or selected through the instrumentality of a public convention, ratified by the universal ballot. I find much diversity of opinion as to the best mode of selecting. I prefer executive appointment, unaided by political conventions, believing this mode the most likely to secure competent agents. Even this mode is not free from objections, because the appointees will naturally have political associations and preferences, which may lead them to error. We talk much, and boast loudly of our high privileges as citizens, of universal suffrage and free ballot, and of our intelligence. This is a pleasant theory, and would be a high blessing if we would faithfully exercise and avail ourselves of these high privileges which we might enjoy under a free government. I assert, sir, we are delinquent in this respect. Why, sir, there is not one in ten thousand who reflects, investigates, and forms opinions for himself. We read the journals of the day with the knowledge that a large portion of the matter presented is deceptive, not true in fact. Yet we move along and slide into the adoption of the errors which we intended to reject, careless and indifferent to our own interests and duty as citizens. Opinions thus loosely acquired are adopted as the essence of our intelligence. Why, sir, the whole thing is a fallacy and a delusion. Go back with me to the early years of the present century, when the belief was nearly universal that the liberty of the press was the palladium of our liberties, and remember that so jealous were the people of the mighty power of that engine of good and evil, that no man connected with it was permitted to receive the most insignificant public office in their gift. Come with me now and see what I see, and find your halls of legislation, your offices of highest trust, including embassies to foreign countries, filled by gentlemen who wield this mighty power; and well may we say that the freedom and the licentiousness of the press is tending to demoralize and lead us to destruction. Now, sir, I know and contemplate with pleasure that there are many, very many, enlightened, pure, honorable, patriotic gentlemen guiding this mighty engine of power, the press, in the right direction. But alas! I know also that there are many more who seek to lead us astray by unsound hypocritical doctrines, relying upon our credulity and morbid appetites for fanciful, sensational teachings. To these teachings I attribute much of the immorality and fanaticism of the present day. I have alluded, perhaps with inferential satire, to the blessed privileges we fancy we enjoy in universal franchise and the free ballot. I say fanciful and delusive, because too large a portion of those most deeply interested in a good government are content with the reflection that they are sovereigns and fail to perform the rights they enjoy, or to discharge their duty as citizens. How, allow me to ask, sir, is this government now? What is the machinery which puts in motion and gives it vitality? We have two political parties contending for mastery. Each have their leaders claiming more honesty and patriotism than the others. These leaders are too often aspirants for place and power. They have their followers, of less note,

though perhaps, a portion of them, more merit. They commence by districts, towns and wards, to select delegates to a county convention. Each political party has its factions within its own organization, striving for mastery. A large portion of the most intelligent, most interested persons too frequently refuse or neglect to be present and participate in these preliminary meetings. Delegates convene at the appointed time and places in county, district, and State conventions, and after much contention they present their candidates to the people. All men, or nearly all, acknowledge allegiance to a party, and are bound to support the ticket formed through the machinery mentioned, whether the candidates presented are satisfactory or not, or hear the cry of "Traitor." We too often yield our manhood and succumb to party tyranny, and vote against our judgments. Another class shrink from exercising the right of suffrage rather than do violence to their judgments and their consciences. The consequences are, that places of trust are too often filled by incompetent, dishonest demagogues. Herein lies the fallacy of the free ballot which has contributed so much to our present difficulties, and will, if not corrected, lead our country to ruin and the condition of the Mexican States. These, sir, are bold doctrines, which have grown up and matured with my increasing years, honestly and fearlessly expressed; which I think, sir, you and a large majority of this committee would approve if you could muster the courage to accept and indorse them.

Mr. YOUNG—I think, Mr. Chairman, that it is unnecessary to talk to a tax burdened people about the honor and glory of this State—they are as proud of this great Empire State as we are, and as much interested in its future greatness and welfare, but they would prefer, sir, at this time to have us devise some way or means of paying off the tremendous debt which has been brought upon them by the great civil war from which they have just emerged. These canals, sir, have always been a source of expense and taxation to this State. The lateral canals (as they are called), except the Champlain, Oswego and Seneca, have never paid more than one-half of the expense of collecting tolls, superintendence and ordinary repairs. They have never paid anything on the original cost of their construction, and they have annually been kept in repair out of the surplus revenues of the Erie and Champlain canals. We are taxed nearly every year for canal purposes. I have just learned from the Comptroller's office, that there is to be levied this fall upon the taxable property of this State a tax of 33-40 of a mill on every dollar for canal purposes, amounting to over one million of dollars, and 55-208 of a mill for money donated by the State to the Albany and Susquehanna railroad and to the Whitehall and Plattsburgh railroad, amounting to nearly one-half a million of dollars. I learned also that the State tax this year will be over four and one-half millions of dollars more than it was last year. I hope that this committee will take into serious consideration the fact that the taxes in the rural districts of this State are now about as great as the people can bear. It has been shown

during the progress of this debate that the taxes in this State are greater in proportion to its population than that of any other country in the world. The report of the Finance Committee shows that the canal debt now amounts to \$39,414,971.90. They propose that this debt shall be paid out of the surplus revenues of the canals, after paying the expenses of collection, superintendence and ordinary repairs, and after this canal debt is paid that then the surplus revenue be disposed of for the improvement of the canals. The Canal Committee have recommended, in their report, in substance, that after paying the expenses of collection, superintendence and repairs of the canals the surplus revenue be applied to the improvement of the canals, and that such improvements shall be commenced in the year 1868. According to this plan it is morally certain that the present canal debt will have to be paid by a direct tax upon the property of the State. And I fear, judging of the future by the past, if we commence the system of enlargement recommended by them in their report, we will not only expend the surplus revenues of the canals, but it will be necessary to create a new debt to complete those improvements. And, sir, taxation for the support of these canals will never cease. I, in part, represent a county that has been taxed for the last fifty years, for the construction, enlargement, and improvement of these canals, and it will be remembered that that old county is the county in which the first Constitution of this State was drafted; she was among the first settled counties of this great commonwealth, and she has paid, in the early history of this State, a larger proportion of the State taxes than any other county within its limits, of her present population. And, sir, she never has received an appropriation of one single dollar for any internal improvement within her boundaries. The effect of these internal improvements have been to bring the products of the great West at a very moderate expense to the New York markets, to compete with the produce raised at a greater disadvantage by her inhabitants on her rough, rugged and uneven soil; but her people have borne taxation for these purposes patiently and patriotically, believing that that which added to the growth, wealth and prosperity of the State added to their greatness and prosperity; but they have now upon their shoulders a county debt of \$1,585,875 incurred during the last war, and, in addition to that, the several towns are indebted in the sum of \$1,015,201.65; and when these sums are added to their proportion of the State debt, and the amounts that will have to be levied upon the taxable property of every school-district for the support of free schools, and the amount raised by the general government by tax upon every article or thing which is eaten, worn, used or seen, and upon every business or profession prosecuted by mortal man, it will foot up to an amount to be raised by taxation truly alarming to them, and will require a draft on their resources for its payment which will be almost intolerable to be borne especially in times of panics and general prostration of business. I think I can truly say for the inhabitants of that old county, "let up." We desire

that these canals shall no longer tax our resources. We desire that they shall henceforth be self-sustaining. And now, sir, I will submit as a question of political economy to this committee, whether it is not better to pay off this canal debt out of the revenue of the canals, while labor and materials are commanding exorbitant prices, and the country is flooded with a depreciated paper currency; than to wait until we shall return to specie payments? The Convention of 1846, by the provisions of article 7 in the present Constitution, intended to make a full settlement between the canals and the general fund of the State for advances made prior to that time; but the enlargement of the canals and the rebuilding of their locks made since that time, pursuant to an amendment of that article of the present Constitution, made in 1854, has caused the canal debt to be greater now than it has ever been before, notwithstanding there has been raised by taxation since the year 1846 over fourteen millions of dollars and paid on these debts, and we are still being taxed every year for the payment of the same. It is evident that unless an article is incorporated in our proposed Constitution, similar to the one reported by the Finance Committee, prohibiting these schemes of enlargement until the debt shall be paid, taxation for canal debts will never cease. According to the present system of assessment, real estate has to bear almost the entire burdens of taxation. Government bonds are not liable to taxation, and money out on loan is changed and shifted about so much that a very small portion of it is ever taxed; and the farmer, who has a mortgage on his farm is trying to pay it off by pursuing the most rigid system of economy, actually depriving himself of the comforts of life, patiently and patriotically submitting to the most oppressive and burdensome taxation to pay off the war debt, is to be told by us if the report of the Finance Committee is not adopted, that there must be added to his burdens his proportion of a tax of ten millions of dollars to erect upon this spot a gorgeous and magnificent capitol; and twenty millions of dollars more for the enlargement of the locks and for the annual improvement of the canals of this State, and all for the honor and glory of this State, for I have listened in vain during this debate for any other reason. It is only proposed to appropriate four millions of dollars for the erection of the new capitol; but this sum will only nicely commence the structure of such an edifice as is proposed to be built. A friend of mine—a tax payer—from a rural district of my county, called on me this week, and when I told him this building and the adjoining library building (which is nearly new) was to be torn down to give place for a more splendid structure, he expressed the greatest astonishment at such a waste of the public money. The Canal Committee propose in their report, a plan of increasing the capacity of the canals by taking up the double locks and building a line of single locks in their stead, of sufficient size to pass boats 23 feet in width and 200 feet in length, capable of carrying 600 tons. They say "the boats now in use can be passed through such locks with the same facility as through those at present existing, the materials where there are

double locks are nearly, perhaps quite, sufficient for the new structures. To do an equal amount of business the number of lockages will be diminished, carriers will be enabled to take freight at reduced prices, and steam can be used as a propelling power." They propose in another part of their report, to take the wall-benches out of the canals, and this is all the enlargement they propose to make "to increase the capacity of the canals," and "to cheapen the transportation of freight." Sir, we have had an abundance of testimony before us that the present capacity of the canals is quite sufficient, if properly managed, to carry all the freight that will be brought to their waters for twenty years to come. According to an estimate of the present State Engineer, the full capacity of the Erie canal will not be reached before 1882, estimating a uniform increase of business equal to the past twenty years. The Finance Committee say in their report that "In 1862 the State Engineer, Hon. Van R. Richmond, arrived at the same conclusion and calculated the capacity of the canal sufficient to transport to tide-water 6,220,000 tons and the testimony of all the engineers in the employ of the State has been entirely uniform since this subject has been agitated, that there is now and will be for an indefinite period in the future, abundant capacity in the Erie canal to transport all the property which will be brought to it," and the committee say that "this is corroborated by those who are engaged in the practical business of navigating the canals." The committee further show in their report, page 14, that the canal auditor in his report of 1866, has demonstrated that the Erie canal is capable of transporting 6,393,600 tons each way," while the greatest quantity ever transported one way was 2,916,094 tons, and that was in 1862. But, sir, in addition to all this mass of testimony furnished us by the canal auditors and engineers, we have this stubborn fact staring us in our faces that during the last war, when the Mississippi river was blockaded, and all the canals and railroads in the great South-west were prevented from carrying freight, the entire products of the West and South-west (except what our Northern railroads carried) was shipped on our canals, and at a time when there was an unparalleled demand for supplies in the army, and during a period of great abundance in those regions, we heard nothing about the lack of capacity in our canals to carry the freight; and the fact was that during the whole of the war, boats were waiting in the ports of Buffalo and Oswego for cargoes, instead of cargoes waiting for them. The Canal Committee have fixed the amount of this expenditure at eight millions of dollars. Now, suppose this estimate turns out like nearly all former estimations of the costs of the enlargement of the canals, what will be done? The work is commenced, and the old cry will be, the work must be completed or we will lose the benefit of all the money we have expended, and appropriations will be made year after year by the Legislature to complete the work until we shall have added to our debt and drawn from the revenues of the canals twenty millions of dollars. Sir, the Canal Committee have no idea of the expense of building these large locks and taking out the wall-benches.

of the canals. They say that the materials in the double locks will be nearly sufficient to construct the new ones. Every practical lock-builder knows that the only use that can be made of the stones in the old locks is to build the straight walls on the sides of the locks, and that the principal expense of building a lock is in cutting the required curve in the large stones to be used at the end of the locks where they fit water-tight against the gates. And as these proposed locks will be as large again as the old locks, the curves round the end will be different and require new stones and of greater dimensions. The gates and valves will all have to be new. Besides, sir, to take out the wall-benches, the side walls of the canals will all have to be taken out, and the bench of earth on which they now rest dug out and a new supply of stones furnished to rebuild the walls from the bottom of the canals to at least a foot or more above the water level, which will be about as great an expense as to have built the side walls of the canals properly in the first place. And taking into consideration the high price of labor and materials, eight millions of dollars will not more than half finish the work. And after you have got it all done how will these large locks "increase the capacity of your canals." The State has no control over the building of the boats, and the practical navigators of these canals will build their boats of the size, and of the model that their experience dictates to them is the best suited to the capacity of the canals. And if steam shall ever be used as a propelling power on these canals you will find that the propellers will be built of such a length and breadth as to carry an ordinary cargo and leave room in the boat for its machinery, and that cargo will vary from one to three hundred tons; and if these propellers are intended to run from the great lakes to New York city they will be built of such a model as to admit of more speed on these canals than is attained by horse-power; they will have to be longer, and wider, and sharper than your square bowed and square sterned canal-boats now are, to carry the same tonnage and make room for the machinery. Now, I ask how can two of these propellers, say 150 feet in length, one behind the other, be locked through a lock 200 feet long at one time? Yet a propeller of this dimension will not carry any more tonnage than one of your canal-boats now does. Now, two canal-boats, by means of the double locks, can be locked through at one time, and in less time, and with the same quantity of water that will be required with the single lock to lock through the propeller I have just described. And how the capacity of your canals is going to be increased by means of these large single locks, I confess I cannot understand. Reference is made by the committee to the use of these large locks on the Delaware and Raritan canal. That canal is only forty-three miles in length, with ten locks on it. The vessels used on it are built to navigate other waters than that canal, and its large locks were built to accommodate all classes of boats, and not with a view of increasing the capacity of the canal. That canal is merely a short cut between two great navigable bodies of water. There never has been over

three millions of tons carried over it in one year. There is no analogy between that canal and the Erie canal, although the size of their respective prisms are about the same, except that the Raritan canal is some two feet deeper. Yet that canal is a thorough cut through the country, and not supported as the Erie canal is in many places by an artificial embankment either on one side or the other. The swell from large vessels propelled by steam would endanger the safety of these artificial embankments on the Erie canal, and it is evident to me that unless the Erie canal is widened and made deeper from one end to the other these large boats would fill up one-half of its channel, and if propelled at the rate of from three to four miles an hour by steam-power, cause the water to wash over its banks. If the object of using steam-power on the canals is not to acquire greater speed, then there is no use of using it, for no cheaper power for towing canal-boats can ever be devised than horse-power. I am at a loss to know how transportation can be cheapened by the use of steam vessels on these canals. The little time that would be gained in making a trip would be of no account, because consignors who are in a hurry to have their freight carried East always ship it by rail; the difference in freight is no inducement for sending it on the canals. Every experiment of using steam as a propelling power on the Erie canal has proved to be a failure, because the machinery required takes up so much room that the boat cannot be loaded to the extent of its capacity with the kind of freight carried on that canal. The original cost of a propeller is much greater than an ordinary canal-boat. The expense of running them is much greater, and the fact that barges are universally used on the Hudson and other rivers (where there are no locks to obstruct steam navigation, and no fear of doing injury to the river banks) to carry heavy freight is conclusive evidence that steamboats and propellers are the most expensive vessels in which heavy freight can be carried. It is said by the friends of the canals that steam-power has proved a success on the Raritan canal. I believe there are no boats propelled by steam on that canal, which are used exclusively for navigating that canal. As I have before said, the boats used on that canal are boats that navigate other waters than that canal and are so constructed that they can be navigated on that canal to save distance. And my colleague [Mr. Hardenburgh], who has been down to see the practical workings of that canal since this Convention assembled, tells you that the propellers used on it are of much less tonnage on an average than the boats used on the Erie canal, showing conclusively that the practical experience of those who are engaged in navigating that canal is against the use of large boats. I have arrived at the conclusion that after these proposed large locks are built, and the wall-benches are taken out of the canals, that the next thing required to be done will be to enlarge the canals to give them sufficient capacity to be navigated by large boats. The advocates for enlargement will never be satisfied. We find, sir, that after every enlargement of the canals, the Legislature is besieged with a greedy

and hungry horde of claimants for canal damages. We have been told upon this floor, that three hundred of these cases are determined by the canal appraisers every year. Indeed, so great has been the increase of these claims that we have thought it necessary to create a new court, to consist of three judges, to be called the court of claims to hear and determine these cases. My colleague [Mr. Schoonmaker], in his recent speech in support of the report of the Canal Committee tells us that, "The contract between the State and her creditors exists only in the bond which she has issued and delivered to them. And so long as the State complies with the letter and spirit of that bond, and has the principal and interest ready to be paid at the times and in the manner required by that instrument, it is no business of the creditor as to where or whence the money comes." I confess, sir, that it is no business of the creditor as to where or whence the money comes from, but it is the business of the debtor to know where the money is coming from to pay these bonds or this canal debt. It is of very great consequence to him, whether it is to come out of his hard earnings, by taxation, or to come out of the revenues of the canals, and that is the whole question before us. Sir, no man is prouder of these great public works than I am. I regret that they are not out of debt, so that their revenues could be used to improve them to the utmost extent that they are capable of being improved. I would like to see them made the most useful and efficient works on this continent, but my policy is retrenchment and reform until our debts are paid. A people can never be free who are oppressed with taxes; the stern demands of the tax-gatherer must be satisfied, even to the last farthing, and nothing but our persons, and the accoutrements of war are exempt from seizure under his warrant.

Mr. LAPHAM—Mr. Chairman, the debate upon the proposition submitted by me at the opening of this discussion, has taken a very wide range, and it may be profitable, by way of enabling the members of the committee to understand the amendment I have offered, to bring back to their attention before I close, the real question depending upon the vote which is now to be taken. Before doing that, however, I propose to notice, in passing, some of the remarks which have fallen from the gentlemen who have engaged in this discussion. The chairman of the Committee on Finance opened his remarks in regard to the question, by charging, in the broadest language which he could employ, the Canal Committee with proposing to violate the plighted faith of the State, in the article which they have submitted for the consideration of the Convention. His specification constituting that violation of plighted faith, if I understood him rightly, was that we proposed to use the sinking funds, provided in the Constitution, for the purpose of making the desired improvements upon the canal, instead of borrowing money at current rates for that purpose. The gentleman, in the course of his remarks said, that he preferred the proposition of his colleague [Mr. Hatch], which is to borrow money at current rates, rather than the proposition of the Canal Committee, for the reason that it thus violated

plighted faith. The Committee on Canals, in examining this question, having arrived at the conclusion that the improvements were desirable, believed that it was better to use the funds lying in the treasury, comparatively idle, rather than to incur debt by borrowing. It seemed to us the dictate of economy to thus use the money which was lying in the treasury of the State, and which at best could command but a nominal rate of interest, rather than to resort to loans for the purpose of doing the necessary work. And this, sir, is charged, I repeat, in the most comprehensive language, as a purpose on the part of this committee, to violate the plighted faith of the State. I do not deem it necessary, Mr. Chairman, to spend very much time in answering this very grave charge, after what has been said by my colleagues [Mr. Schoonmaker and Mr. Beckwith], and after the very able refutation of the charge which fell from the gentleman from Onondaga [Judge Comstock], the other evening. It seems to me that what they have said completely answers the whole of this accusation, and all that I need say is to repeat, in brief, the position substantially assumed by them, that this provision for a sinking fund contained in the Constitution of 1846, is no part of the contract between the State and its creditors. It is not named in the State obligations that any such fund shall be provided for the payment of its debts. It is simply an arrangement by which the people of the State, in the organic law, have sought to protect themselves against appropriations of money by the Legislature for other and different purposes; and it is competent for the people at any time, by changing that fundamental law, to waive that protection, if they choose to do so, and give to the Legislature the exercise of larger powers in the appropriation and in the use of money. But again, sir, suppose we put it in the strictest sense—suppose we say, as has been suggested by individuals in the course of the argument, it is an implied pledge to the creditor. A man borrows five thousand dollars, and agrees that he will lay aside out of his annual income one thousand dollars a year for the purpose of paying the debt at the end of the fifth year, and he mortgages his farm for security for the payment of the \$5,000. Can the holder of the mortgage seriously complain if, instead of laying that thousand dollars away to rust until the end of the five years, he puts it into substantial improvements upon the very farm covered by the mortgage? It does not seem to me that there would be a very grievous foundation for complaint of a violation of plighted faith. Now, sir, in every other respect, except simply the use of the sinking fund or a portion of it, in the mean time, the Committee on Canals propose to adhere rigidly and strictly to every provision of the Constitution of 1846. They provide for the payment of every obligation and of every debt as it matures, and of the interest on every debt as it accrues. Sir, I was in favor of the financial provisions of the Constitution of 1846, and I fall behind no man in my determined purpose to stand by every pledge of that kind. And I believe that is the sentiment of every member of the committee with which I have the honor to be associated. Why, sir, upon the Committee on Canals is my

friend, Judge Clinton, from Erie, my friend Mr. Schoonmaker, from Ulster, my friend Mr. Seymour, from Rensselaer, and my friend Mr. Bergen, from Kings all of whom differ with me in political association; and when the gentleman from Orleans [Mr. Church] seeks to charge us, he does charge us—for he does charge us all—with a purpose to violate the plighted faith of the State, and place it beside repudiating Mississippi, the gentleman takes upon his shoulders a responsibility much more onerous than that with which he seeks to weigh down the necks of the people in the shape of onerous taxation. I know, Mr. Chairman, the gentleman from Orleans [Mr. Church], was kind enough to say before he concluded that he meant no disrespect to the gentlemen upon the Canal Committee—that he does not impugn their motives. And while using this language: "I undertake to say that the adoption of the report of the Canal Committee in its financial arrangement" (not in its arrangement for improvement—but in its financial arrangement), "would be a disgrace to this Convention, and a disgrace to the people of the State;" the chairman turns very kindly to us and says, "I mean no disrespect to the gentlemen of the Canal Committee by this." Well, Mr. Chairman, I feel bound from my relation to the chairman to accept this disclaimer, but I cannot do so without reminding him that

"The man that hails you Tom and Jack,
And proves by thumps upon your back
How he esteems your merit;
Is such a friend that one had need,
Be very much his friend indeed
To pardon and to bear it." [Laughter.]

Again, the chairman of the Committee on Finance says that no work has ever been done yet upon the canals of this State, but what in the result, doubled the estimate which was made in the outset for the work. The gentleman has forgotten that the Erie canal was constructed at an advance of less than ten per cent upon the estimates originally made by the engineers; and that was in the very infancy of works of this description. The gentleman has entirely forgotten the character of the work which we propose to make. We are not going into a general enlargement, or construction of a new canal. We are not proposing anything except simply the reconstruction of the walls of stone which constitute the locks of the canals. Now, Mr. Chairman, is there any practical difficulty in estimating the value of that description of work? The excavations are all made. The channel is all prepared. A portion of the wall is already laid. The materials are all on hand. And yet it is said that this is full of hemlock and *hardpan* and quicksand; and that it is utterly impossible to do this work without swamping the State in debt. Now, I do not view this work as work of that character at all. And here let me call the attention of the members of this committee to what will commend itself to their judgment—to a comparison, to illustrate the cost of the structure which we are proposing to erect in the way of completing these enlarged locks. You can, Mr. Chairman, go out to-day even at present prices anywhere in the country and build a magnificent house for

\$25,000, furnishing all the materials. You can erect what would be called a splendid house of large dimensions, larger than the locks here proposed to be built, for \$25,000 and furnish it from cellar to garret. Here let me call the attention of the committee to one item of the evidence upon which the committee relied in their recommendation in respect to this branch of the case. I allude to the evidence of the witness, Mr. Wright, who was examined before us. He told us, sir, while he was canal commissioner, what occurred on his division. We asked him what was his opinion as to the relative advantage of the two descriptions of masonry—what is called the finished masonry and what is called rubble masonry, to which he said:

"My judgment is that the dressing which has been used on all our locks, the enlarged sized locks, is an entirely unnecessary expense, and to test that, while I was commissioner, I built a lock on the Chenango canal, which I did not make in the ordinary acceptance of the term of rubble masonry, because that would not answer for a lock; that is, I did not make it of the kind of rubble masonry you would put under your barn, but I made my stone, although large, rough, and rubble back, and I built this lock for \$5,000, indestructible; I put oak fenders in every five feet, which would last about ten years, and can be put in new for, say \$40; I built that lock for \$5,080, but that was without profit to the contractor; there was a lock built of wood on the Chenung canal about the same time which cost about \$8,000, and this lock which was entirely indestructible cost but \$5,080."

Now, sir, this is an illustration, and an apt one, of the manner in which this work can be done, and of its cost, if it is done by that description of men which my venerable friend from Schuyler [Mr. Magee] would place in charge of this work, provided it is authorized. And, of course, all estimates should be made upon the assumption that the expenditure is to be by that description of men. You see, Mr. Chairman, here was a lock one hundred feet in length and adapted to pass boats of ninety feet in length and fourteen feet in width built for \$5,000, and every article of material for it included in that estimate, because it was built without profit. Cannot the State canals be managed in that way? If this contract system is abolished—if this engineering which has covered so much *hardpan*, quicksand and hemlock, and everything else, is abolished, as it has been already by the action of this Convention, is there any difficulty in building up these cribs of stone on the line of the canals without any hazard of reckless expenditure? Why, sir, there is no danger whatever; it is the simplest proposition in the world. It is as capable of computation as any structure in mechanics possibly can be, and there is no room whatever for any large margin with reference to the expenditures for this work if it is undertaken by the State. Mr. Wright says that he would take the contract at the price named. He answered: "I examined the estimate that Mr. McAlpine made. I made an estimate myself, and my judgment is that it is ample. In my judgment the work might be done for less, but, taking all contingencies into con-

sideration, that amount would be safe as to the cost of the work." And Mr. McAlpine, an experienced man, said that he had estimated, and made a very liberal estimate, by which he had put the cost of this work at the sum of \$40,000 per lock. My own judgment, Mr. Chairman, is that it can be done, if it is done honestly and faithfully, for less than two-thirds of that amount. I cannot believe when they are paying but \$30,000 per lock on the Chenango canal, including all materials, that it is going to cost \$40,000 to build these locks when the materials are all on hand. And yet the chairman of the Committee on Finance upon this topic of expenditure, and under estimates of public expenditures, exclaims "This work before you get through with it, will cost the State from \$50,000,000 to \$100,000,000," that is half a million dollars a lock. And it is this kind of denunciation and epithet which it is hoped will swerve the intelligent, candid judgment of the members of this committee and control their votes upon this question without due consideration of its merits, without any consultation in regard to economy, without any regard to the interests of the State, and to treat it as a blind scheme of speculation which is to swamp the finances of the State in an overwhelming load of debt. Mr. Chairman, this question of the capacity of the canals is treated in the same liberal way, and with the same indulgence of epithets which has been applied to the other question. It is all nonsense, says my friend, the chairman of the Committee, to talk about want of capacity in these canals. True, fifteen men have examined the subject for a month—true, a sub-committee has been upon the line of the canal and examined for themselves—true, witnesses have been examined—the whole field has been examined, but it is all nonsense to talk about their having arrived at a correct conclusion upon this question. Mr. Chairman, without saying whether it is proper or not, thus to treat the action of the committee, and the conclusions to which they have arrived, I propose to vindicate the action of the committee in this respect. It is in this respect that I regard their action of most importance, and I will refer to some of the facts upon which their judgment was based. I call the attention of the committee, in the first place, to an extract from the report of the Committee on Canals made at the last session of the Legislature. A resolution was passed in furtherance of an act to authorize the construction of enlarged locks upon the Erie and Oswego canals, and the opinion of the canal board was asked, and they say in their report, "That the subject has been considered and quite fully discussed by the Legislature for several years past, and returned to the State Engineer and Surveyor and the canal board for their opinion as to the necessity of the work, the proper size of the locks, and the effect of their construction upon the trade of the canals." In answer to a resolution of the Assembly in the year 1864, the said board reports: "That the Erie canal has for the past two years nearly reached its maximum capacity for property seeking tide-water." The State Engineer, in answer to a joint resolution of the Senate and Assembly in 1863, reports in 1864 upon a size of lock two hundred and

twenty-five feet in length and twenty-six feet in width, and estimates that one tier of such locks with very slight alterations in the prism of the canals, would sufficiently increase their capacity and reduce the cost of transportation fully one-half. Again, in answer to a resolution of the Assembly in 1866, the canal board speaks approvingly of this work, and of the necessity of its early completion. Now, sir, we entered upon the investigation in the outset in the light of this state of facts. That was the deliberate judgment of the boards having charge of this subject, that the time had arrived when the State should enter upon the construction of the work by way of improving the navigation and capacity of the Erie canal. But, sir, we are met upon this point by the argument that the number of lockages proves that there is no necessity as this existing. And my friend from Onondaga [Mr. Andrews] made an ingenious argument, such as counsel would make in the advocacy of a cause, by abstracting the best feature of the evidence in favor of the view which he proposed to take of the question, and apparently an argument which, without consideration other than that which he gave to it, would seem to demonstrate that there was not yet this want of capacity. And still, Mr. Chairman, with deference to the judgment of my friend, whose judgment I would esteem on all questions, he is clearly mistaken in the data upon which he has based his opinion. The number of lockages is no test whatever of the capacity of the canal, unless, at the same time, you know the tonnage of the boats at the time the lockages take place. You must combine the two; you must know what was the load of the respective boats, or else you have no test whatever upon the subject. Upon this point I read from the report of the State Engineer and Surveyor, in his report of 1864, a single paragraph which will illustrate the view I desire to present. He says:

"Most of the time at present required for locking loaded boats is consumed in forcing the boat into a lock, which it almost exactly fills, against a body of water which has no means of escape, except by the exceedingly limited spaces between the boat and the bottom and sides of the lock."

So anxious have been the persons navigating the canals to increase the size and tonnage, and capacity of their boats, that they have built them almost in the form of merchant's boxes—square at the bows, square at the stern, and almost perpendicular at the sides—and so large that they completely fill the present locks. They have done it in order to enable them to cheapen the transportation upon the canals, and they could accomplish it no other way. This extract from the report of the engineer illustrates the mode in which great delays will doubtless occur. Now, sir, to show that this is so, let me call the attention of the committee to a pregnant state of facts. In the year 1841, with only a single lock, with the light boats then navigating the canal, 30,320 boats were taken through at Alexander's lock in that year. But the entire tonnage they carried was only 632,520 tons. In the year 1866, at that same lock, only 29,862 boats passed through, and

their tonnage was 2,523,664 tons. With a thousand less lockages than there were in 1841, more than five times the amount of tonnage was carried. This shows, sir, that it is not the number of lockages which determines the question at all. Mr. Chairman, at the very dates quoted by my friend from Onondaga [Mr. Andrews], in 1863, the 3d of August, where he had over 220 boats at Syracuse, there were only 163 locked at Alexander's lock; on the 4th only 141; on the 23d only 121; on the 25th only 161; on the 27th only 159; on the 29th only 150, and on the 10th of September, 153. Now, these are the very days when my friend from Onondaga [Mr. Andrews] thinks between 200 and 230 boats passed through the lock at Syracuse. And what does it show? It shows that it was a year when boats were dug up wherever they could be found for the purpose of accommodating the increased commerce of the canals, and they were running to and fro into this canal and out of the other, and through this lock at Syracuse, which is near the junction with the Oswego canal. Light boats were passing constantly, and thus the number of lockages were increased. But, sir, I am willing to take the Syracuse lock in 1862 as a test, and I will extract from the evidence which was given before us what would satisfy me, as an intelligent and reasonable man, in determining this question in favor of doing something by way of improvement upon the canal at the earliest practicable period. Mr. Wright, who was canal commissioner in charge at that time, was examined before the committee, and upon that point I asked him this question:

Q. Now state in regard to the capacity of the locks as they now are to do the business of the pressing season? A. We had about as much in every month of the year at Syracuse in 1862; I was commissioner at that time.

Q. Were there at times more than you could do? A. I will tell you the facts in regard to these detentions which Mr. Breed alludes to; this large number of boats were there sometimes, but the men worked at it so energetically and faithfully that the boatmen were satisfied, and I reported that there was no material detention; still every month in the year, at some time, you could stand and count from ten to one hundred boats waiting to be locked through.

Mr. Chairman, I call that detention. I call that a necessity for further facilities for the purpose of navigating the canal. I have looked at the auditor's report and I find that the average lockages for the last month, the month of July in this year, is only 145. I have looked at the lockages at Syracuse in 1866 when boats, instead of running about as they were in 1862, for the purpose of getting the business, were pursuing their ordinary course up and down the canal, and I find that there was not a single day in the month of August or September, the dates quoted by my friend from Onondaga [Mr. Andrews], where the lockages come up to 160 per day. They ran from 103, which is the lowest, to 158, which is the highest. And that is as shown by the testimony which has been produced here, by the practical operations of the canal, the full capacity of the canal for lockages for loaded boats

at that point. Sir, Mr. Chase, who was examined as a witness, says that it took from 11 to 15 days in 1862 to get a loaded boat from Buffalo through and back—to make its round trip, and that it does now. He says the ordinary passage of the boats, if there were no delays, would be from eight to ten days. Mr. Littlejohn, than whom no man in the State has had more practical experience, says that the delays from these causes are thirty-three and one-third per cent in the navigation of the canals. He says that he has had for years a controversy with the State officers upon this question, they acting upon theory and he upon practice. And as we say theory is fallacious because you cannot carry it out with accuracy. Practice is the test, and here is practical men telling us that thirty-three and one-third per cent is lost in time. Mr. Breed, another witness who was examined, testifies substantially to the same state of things. General Stuart an engineer and once the State Engineer, tells us the same thing, that unless we provide in some way for these delays the commerce which is going through these canals and which will generally enhance our revenues in the future, will certainly be lost. We asked him this question:

Q. State whether or not you do not think that the present capacity of the Erie canal at the crowded season of the year has been reached, and was it not in 1862? Were there not delays of four or five days? A. I know of delays myself of a week.

Q. Is not the fact, that for six or eight or ten years back, practically the capacity of the canal has been taxed very nearly to its utmost, and to its utmost when we had full crops? A. I might answer the question by saying that I believe in 1862 it was taxed beyond its capacity and that the State lost very largely in tolls in not having more capacity to do the business at that time; and I will state farther, that I believe with the large crops the West promises for some time, I think for the next three to five years, they will require twice the capacity, for that portion that would come this way, if you had the capacity to bring it, and if you could cheapen the transportation you would have much more.

Now, sir, he is confirmed by the evidence of the witness, Mr. Taylor, formerly State Engineer; by the evidence of Mr. Clark, and Mr. Delamater, who are acquainted with the operations of this lock at Syracuse, and by the examination of the sub-committee who went there and took observations for an hour themselves, and have given us the result of their examination. It seems to me that this state of facts justified the Committee on Canals in arriving at the conclusion that, in some mode, it was necessary and desirable that there should be an enlargement or an improvement of the capacity of the canals to take tonnage to tide-water. What is this question of necessity, Mr. Chairman? It is not a question of absolute physical necessity. It is not like the absolute necessity of the body for daily bread. That is not the way in which to view the question of the necessity of the canals. But it is a question as to what are the probabilities in regard to the future of the navigation of the canals. Can the business be done

with the structures as they now are, or should increased facilities be provided in order to guard the revenue and the honor of the State? That is the way in which this question should be viewed. We cannot wait until this necessity is absolutely forced upon us, and the canal-boats lie rotting in the canals, and the vast produce of the West is going off in other directions. That would not be wisdom. That is not the true view of the question of necessity. But the term necessity, as applied to the question under discussion, is that wise forecast which De Witt Clinton termed necessity, when he advocated expenditure to build a new canal, instead of using the old water-way which had theretofore answered the purpose tolerably well, and reduced freight from \$100 down to \$24 per ton coming from Seneca river to this city. Now, sir, my venerable friend from Schuyler [Mr. Magee], who has outgrown that fiery zeal for office which once burned in his veins as brightly as it now glows in the veins of the most ambitious member of this Convention, has discovered in the financial computation annexed to the report of the committee, what he regards as a very great error, and that is in the items of interest. I will spend but one moment upon this topic. We find now, in the sinking fund, over two millions of dollars. That, on the first of January next, after paying the accruing interest, will be increased by the revenues from canals to \$3,976,000. We add a year's interest at four per cent, which is what the banks pay for the deposits, which carries us to the first of January, 1868. The gentleman says this is erroneous, because we cannot use the money and get interest upon it at the same time. When are we going to use it, Mr. Chairman? This work cannot be commenced until after the close of navigation in 1868. It must be commenced in the year 1868 or 1869, it makes no difference which.

Mr. MAGEE—Will the gentleman allow me to make a statement? I commenced at the first of January, 1868, I assume that the Legislature would make it in the fall of 1869, and I commence the next year.

Mr. LAPHAM—My answer will apply equally well in that case. This money will, therefore, if we do not commence until the fall of 1869, remain on deposit until the month of January, 1870. Commencing in the fall to do our work, slight payments might perhaps be made prior to the 1st of January, but the great bulk of this money is to be expended after the 1st of January, 1870, when the work is contemplated to be done; and on the 1st of January, 1870, we take out this whole sum with which we propose to do the work in question. So that there can be but a slight abatement of the interest, even if a portion of the money in the mean time should be used. The item of interest is about \$300,000, and there is nothing in the criticism of my sagacious friend and financier from Schuyler [Mr. Magee] which at all interferes with the propriety of the recommendation which has been made by the committee. But, exclaims the gentleman from Orleans [Mr. Church], the chairman of the Finance Committee, this is a profligate era, money is embezzled by thousands, and there is no safety

in entering upon this work at this time. Can we act upon arguments like that, Mr. Chairman? Is this the first and only year in which money has been embezzled by public officers? Did we stop the wheels of the National government when a federal cabinet officer extracted from the treasury of the United States a greater amount of property than all the canal contractors of this State have ever robbed from us? Not at all, Mr. Chairman. The operations of the government have gone on just as though there had nothing occurred. This is not the first hour in the history of our race when peculations in the treasury have been found to exist and have gone unpunished. The man who robbed the United States treasury in the manner to which I have adverted, not only escaped as the greatest thief of the present age, but he proved himself, at the capture of Fort Donaldson, the greatest coward the rebels had, as thieves are always cowards. So the gentleman from Orleans [Mr. Church] says, in the fervor of his utterances upon this question, that large amounts of property now escape taxation, and that is the reason why we should not enter upon a career of expenditure and debt. Sir, I admit that too large an amount of property escapes taxation, but I commend to the consideration of my friend from Orleans [Mr. Church] the fact that he is chairman of the committee having that subject in charge, and if he had devoted his attention to the framing of proper constitutional provisions to relieve the people from unjust and oppressive and partial taxation, instead of groping about to see how much he could magnify our taxes, with a view of frightening people from their property, his time would have been better employed than it has been. So the gentleman from Orleans says, if this work had been done, that is, the enlargement of the Erie canal, by using the revenues of the canals instead of resorting to taxation and borrowing for the purpose, the canals would have been much better off than they now are. Mr. Chairman, that is precisely what we propose now to do. I beg to remind the gentleman that the proposition which we make here is to use the revenues of the canals as they accrue for this very purpose, instead of borrowing or resorting to taxation. In other words, we are following out the very policy which he says if it had been adopted instead of the enlargement, by means of creating a debt, would have left the canals at this period of time, in a much better condition than now. Mr. Chairman, a morning paper in this city, the morning after this discussion was opened, chose to gazette me as a new convert to expenditure and debt. I am unconscious of any act or opinion which would incur the application of this epithet to myself. We recommended no debt. We state specifically that our object is to avoid taxation and to avoid debt. We provide for the payment of every dollar of the debt. We use only the moneys which are lying comparatively idle in the treasury, for the purpose of this work. And why I should be charged, or the committee to which I belong should be charged, with being converts to expenditure and debt I cannot understand. Why, Mr. Chairman, I even voted against incurring a debt of \$6,000 to the editor of that sheet for publish-

ing his paper during the sitting of this Convention, and am I to be charged by him with being a new convert to expenditure and debt? When the editor of the *Argus* and the gentleman from Orleans [Mr. Church] undertake to present me in the attitude of a person actuated by the mad zeal of a new convert in reference to this question, I have a right to reply to each, as I do reply, in the language of an earlier and greater convert, "I am not mad, most noble Festus, but speak forth the words of truth and soberness." I feel that I have not shown any undue zeal in the discussion of this question, considering its great importance. Mr. Chairman, it will be remembered that in opening this discussion I said not one word by way of defense of the details of the project of enlargement that were put forth by the committee of which I am chairman. I did not wish to discuss that question of detail of the mode of enlargement, because I regard the other a grave question upon which the committee I represent, and the Committee on Finance are at issue. It is the real question involved in this case. A reference to what I said will show that the point presented by me was whether we should undertake in the future, as we did in 1846, to tie up the hands of the State for twenty years against doing anything, or whether we should provide in some mode for a scheme of improving the canals as we would improve any other piece of public property belonging to the State. I stated in my opening remarks that the practical and vital question was, what should be done with these works. We have first resolved (as we have unanimously) that they should remain the property of the State. Now, I ask, sir, that we shall not re-enact the policy of 1846, and provide that the Legislature shall not sell or otherwise dispose of the canals of this State, but that they shall remain the property of the State forever; and at the same time place in the fundamental law, an absolute prohibition upon the Legislature from expending any money whatever, except for their care and management, and for ordinary repairs. What would be the result? Enact the article of the Finance Committee, and next year a flood or a break may destroy the working capacity of every canal in the State, and where are we? There is no power to restore them so as to resume navigation. That is not ordinary repairs, and there we are, the canals destroyed—all their working capacity taken away. There is no mode in which the work could be done. If the gentlemen of the Convention will look at the statistics, and the reports of the State officers, they will find that all these expenditures by way of repairing damages by floods are not classed as ordinary repairs. They come within the term extraordinary and are not held to be within any of the provisions of the laws relating to ordinary repairs. All I ask, sir, is that we shall leave, as one gentleman has said in the course of this discussion, the fundamental law flexible upon this subject, and say that the Legislature, if we do not choose to do it, may guard and protect the rights of the people. The amendment which I proposed, and which is the question now to be decided, strikes out the first section of the article of the Committee on Finance, and the recital con-

tained in the first section of that article. It is as has been shown by gentlemen during this debate to a certain extent, a hypocritical recital and an unreal presentation of the financial condition of the State, and I propose to substitute in its place a constitutional provision, a section which declares that certain debts shall be denominated hereafter the canal debt of the State, that the sinking funds shall be consolidated and denominated, the canal debt sinking fund, leaving the surplus of those revenues, over and above what is necessary to pay the canal debts, to be disposed of as other provisions of the Constitution, or acts of the Legislature may provide. Sir, this substitute I propose is a proper provision in the Constitution. If the committee prefer to add what is called the general fund debt, to those incorporated in the section as reported, I shall have no objection to that. It may properly be denominated, although it is not rightly a debt of the canals. Sir, when this substitution is made, when this sixth section of the Committee on Canals is placed in lieu of the first section of the article of the Committee on Finance, the question will then arise, which is not now before the committee for decision, what shall be done hereafter in the way of applying the surplus revenues or other means of the State to the improvement of the navigation of the canals. The question will then arise as to what improvements, if any, are necessary or desirable. That question is not involved in the motion which I have submitted—it is a question for after consideration, and will arise when other sections of this proposed article are taken up for discussion and decision. Whether this committee shall deem it preferable to incorporate in the Constitution an affirmative provision in regard to the enlargement of the canals or whether they shall recommend the Legislature to act upon that subject by ordering legislation, or whether they shall prefer to instruct the Legislature to submit to the decision of the people a plan for the enlargement of the canal, are questions which I do not deem of any great moment. The great thing which I desire to secure is such provisions in the Constitution as will allow this improvement to be made, or the absence of any provision which will prohibit its being done whatever may be the necessity. Sir, if we adopt the theory that such improvements may be made as the necessity arises, and as the revenues will permit, then we shall be in a safe position. But, sir, if we start with the absurd theory that these canals are to remain ours, that they are to be State property, but that they shall not be improved and nothing more shall ever be done in reference to them—until all the debts which have been incurred in their construction, and all the debts which are charged upon them, shall have been paid in full, and until the advances made, have been returned to the treasury; if we adopt that policy then there will be a state of unrest and insecurity among the people, and a liability to forfeit the best interests and tarnish the honor of the State. Mr. Chairman, I have heard a good deal during this discussion about the canals being the debtors of the State of New York, and although it appears by the auditor's tables, and has been shown by gentlemen who have partaken

in this debate, that they have not yet refunded all the money that has ever been expended upon them, profitably or unprofitably; that a balance of over seven millions of dollars remains, I deny that such is in any sense a just account to be made between the State and the canals, if they are to be talked about as our debtors. The owner of a farm sets himself to work and builds a house, which costs him \$5,000. He runs in debt for it, if you please, and mortgages his farm to pay that debt. But by erecting that house the value of his farm is increased \$7,000. Suppose he turns to his house, and says, in the language of these gentlemen, "House, you owe me \$5,000, which I expended in building you on this place." Would not the house take to itself a tongue and reply, "Master, true; you spent \$5,000 in building me; but I have made your farm worth \$7,000 more than it was before I was put here. Give me the \$7,000 which I have added to your farm, and I will pay you the debt of \$5,000 you incurred in building me." Is it not a just view of this case if we are to treat these canals as an outside, independent person or body, from the people of the State, that we should enter into an account upon equitable principles, as suggested by my friend from Onondaga [Mr. Comstock], and that the account should be made up by giving credit to the canals, not only for the money they have refunded to the treasury, but for the vast accessions of property which they have made throughout the length and breadth of this State. Right here, I beg to suggest to delegates of this Convention who come from remote portions of the State, away from these canals, this consideration. They say that they have paid the contributions by way of taxes required of them for the purpose of constructing these works, and have never had any resulting benefit. Sir, is that true? If the lands along the line of the Erie canal had only kept pace with the lands in the remote portions of the State; if those magnificent villages and cities, marts of wealth and commerce, had not grown up; if the lands in Onondaga and the western counties had only kept pace with those of Clinton, Franklin, Delaware, and Ulster, what would have been the condition of the people there, contrasted with the people of the central portion of the State? They would have had to pay on lands valued at about the same price, their proportion of the taxes. Do they not see that in the largely increased volume of wealth lying along the line of this canal, there is an amount of real estate for taxation which takes off their shoulders the great burden of taxation for the purpose of carrying on the affairs of the State; and that in that way benefits have resulted to them far greater than any contribution they have ever made to the canal? This is the legitimate result of the construction of canals; and to my mind it is a very strong reason why gentlemen in those localities should not complain of the legitimate use of the revenue from canals being used to improve them. Mr. Chairman, I have said all that I deem it necessary to say on this subject at this time. I ask the members of this committee not to treat this subject lightly or inconsiderately. I warn the members of this committee that the people of this State, not only

at the western end of this canal, but all along its line, are alive to the consideration of the magnitude and importance of this subject. I beg the members of this committee to remember that the people are alive to the vital importance of preserving the interests of this State independent of and aloof from all monopoly and all corporation to absorb the growing trade of the State. There is a wakefulness on this point. If you treat their views inconsiderately and lightly, and kick and cuff this question out of the Convention as unworthy of consideration, you might as well burn up the parchment on which you write the lines of this Constitution. But if you adopt a wise policy and leave this species of property to be managed as every prudent man would manage his own property, there is safety, and the people will be satisfied. One word more and I have done. I have said we provide a terrible load of taxation binding heavy taxes upon the shoulders of the people for a series of years. Such is not the case. Even if true, is that any reason why the necessary work should not be done? Would my friend from Orleans [Mr. Church] omit a single necessary improvement to his own habitation for that cause? Or would any other member of this Convention? Do the people individually, or any company, any interest, abate anything in the way of improvement by reason of this state of things. On the contrary, has there ever been a time known in this State when there was so much of improvement going on as at this very hour. The people are not alarmed at this state of things. The people are not complaining and groaning under this weight of taxation, the reputation of which rolls like a sweet morsel upon the tongue of my friend from Orleans [Mr. Church]. They are active, enterprising, and all going forward. Villages are all growing, cities are growing, houses are going up wherever the opportunity to build them exists, notwithstanding this load of debt and taxation. Shall it stop this improvement of the canals of the State, when such improvement shall be found necessary? I cannot subscribe to any such narrow-minded policy.

Mr. HAMMOND—Mr. Chairman, I have occupied but very little of the time of the Convention and it is not my intention to weary members with the remarks that I now submit. I have always been an advocate of the system of internal improvements adopted by this State—my friend of the canals; and I should not do my duty here if I let this opportunity pass without insisting that a just and liberal policy should be adopted toward the canals. Sir, I remember when the Erie canal was building, and it was my fortune to reside in a part of the State that was not immediately benefited by its construction. I was but a boy then, but I distinctly remember what was said about the canal: it was called "Clinton ditch," and men said they would ask to live longer than to see a boat go from the North river to Buffalo, and the people looked on the experiment with great distrust, if not with contempt. Sir, the projectors of this great enterprise were far-seeing men; they persevered and met the objections and conquered all opposition, and the canal was built; and boats found their way from Albany to the lakes. The country through which

the canal passed was new — Utica, Syracuse, Rochester and Buffalo were small towns, and the numerous large and flourishing villages that now line its banks were small hamlets; the city of New York contained about 166,000 inhabitants, and the population of the State was 1,614,000. Forty years have passed, and what do we see? The Erie canal dotted with cities and large villages from one end to the other; the whole extent of country through which it passes has become flourishing and populous; the inhabitants of the State have increased from 1,614,000 to 4,000,000; the city of New York, from a small town, has become the metropolis of the Western Hemisphere, and destined, under a liberal policy, to rival the cities of Europe. Now, sir, to what shall we attribute this unexampled prosperity — this unusual growth of cities and villages and increase of population. While other causes have combined, the great and leading cause has been the construction and enlargement of our system of canals. Sir, that day will be an unfortunate day for the State of New York when a policy shall be adopted that shall in any way cripple or embarrass the navigation of the canals. They belong to the State, and the people, as owners, are permitted to occupy them—to put on boats and transport their own and their neighbors' products. It makes business for many thousands of our people and contributes vastly to the wealth of the State. Sir, I apprehend that the opponents of the canals do not take into the account our stock in trade. The Erie canal was projected and built when the State was poor, the people poor and our resources were quite unimportant, consisting of auction and salt duties. If the people of that day could meet the emergency and provide for making the original canal, can not we, with the experience of forty years; and a demonstrated fact that our stock in trade is worth at the lowest estimate \$40,000,000, adopt a plan that will keep in repair and provide for enlarging, as fast as the necessities of commerce require, this great thoroughfare projected by the best men of the State and which has fulfilled the most sanguine estimates of its friends. Sir, I am surprised to see how little value is placed on the canals by members of this Convention; with an admitted income of \$2,500,000 per year, they would so trammel the resources of the State that it would virtually abandon at least a part of our canals and thereby reduce their revenue. Let us for a moment examine this. It is claimed that the lateral canals do not pay and for that reason they should be abandoned. Now, sir, I reside on the line of the Genesee Valley canal, located there in 1831, when the country was new, and have been conversant with all the facts in constructing the canals; and while it is claimed that it has cost the State \$14,000,000, an abatement for a large amount should be made for the stop policy adopted in 1842; the amount paid for damages to contractors I do not know, but that together, with \$100,000 thrown away on a tunnel, and known frauds committed by canal thieves would reduce the amount \$2,000,000. Say that the Genesee Valley canal is in debt \$12,000,000, then please to look at it in a business point; our pine timber for years,

and in fact until the canal was built, was worthless; millions of shingles have been made, and large quantities of lumber have been manufactured at low wages, and call the timber worth nothing; I have bought 100,000 shingles for six and eight shillings per thousand, and lumber for \$3 for box, \$6 for 2d, and \$10 per thousand feet for clear; any one that knows anything about labor knows that those prices will no more than pay the labor. Beech and maple is cut into cord wood and drawn to the canals and shipped to Rochester and other points on the Erie canal. For five years an acre of good beech and maple has netted from \$50 to \$80 per acre; that is, an acre that made twenty-five cords, \$50, and so on; or two dollars per cord, net. Pine and hemlock lands have paid much better; hard-wood lands that could be bought for three dollars per acre before the canals were built are now worth from \$20 to \$60 or \$80 per acre; that is to say, the wood on the land will pay that; take the canal away and there would be no market for it. The fact is, all lumber taken away before the canal was built was the same as thrown away, it did no more than pay the laborer. Now take the country from Mt. Morris to Millgrove, it was a great proportion timbered land; the first sale of pine timber after the canal was opened was from \$3 to \$5 per thousand feet, board measure; large quantities were sold for that, and when manufactured it paid more; the above was the price on the stump. For five years pine lumber has paid much more, and hemlock is worth from \$2 to \$3 per thousand feet, standing. Now, if we could compute the quantity that has been taken off since the canal was finished, and used—some sixteen years, we could show a saving to the people vastly greater than the cost of the canals. Add to this the increased value of farming lands; and it seems to me that any good business man would pronounce the investment a good one. I have had no time to examine, but have no doubt but the increased valuation of real estate alone, as made by the assessors, would show an increase of several times the cost of the canals. Again the lateral canals are necessary as feeders to the Erie canal, and the whole should be kept sacred so long as the necessities of commerce will keep them in repair, and pay two or three millions of dollars into the treasury of the State each year. I disagree with gentlemen whose only anxiety seems to be to put the canals in good repair, and let the people of the West use them, free from tolls. I would provide for finishing and putting them in good repair, and reduce transportation in that way. The tolls should be continued subject to the control of the Legislature, at all times to be sufficient to keep them in repair and afford revenue to support the State expenses; and then sir, I would hand them over to our successors the richest legacy ever bequeathed by a people to their posterity, and sir, this state of things must continue so long as there is a Great West; so long must their products find a market through this State. Circumstances and climate make this sure. The city of New York for all time to come is to be the commercial center of this continent, her markets will be the best; and the northern climate is better adapted to the preservation of

products than the more southern routes, therefore I think we may safely improve our canals with full confidence that they will be used.

The question was announced upon the motion of the gentlemen from Erie [Mr. Verplanck].

Mr. VERPLANCK—I desire, when the question is taken, that the vote will be taken in a full house. This is about the hour when members are going to dinner, and I therefore move that the committee rise, report progress and ask leave to sit again.

The question being taken upon the motion, on division, the vote was 47 to 33, no quorum voting.

The CHAIRMAN—The Chair votes in the negative, making a quorum, and this motion prevails.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. SHERMAN, from the Committee of the Whole, reported that the committee had had under consideration the reports of the Committee on Finances and on Canals, had made some progress therein, but not having gone through therewith, had instructed their Chairman to report that fact to the Convention and ask leave to sit again.

On motion of Mr. FIELD the Convention took a recess until seven o'clock.

Evening Session.

The Convention re-assembled at seven o'clock.

Mr. SHERMAN offered the following resolution:

Resolved, That the Secretary cause to be restored the partition, that formerly separated the southwest ante-room from this chamber.

Which was laid over under the rule.

Mr. M. H. LAWRENCE asked leave of absence for Mr. Gross, for the remainder of this week.

There being no objection, leave was granted.

Mr. SEYMOUR asked indefinite leave of absence.

There being no objection, leave was granted.

Mr. CLINTON asked leave of absence from the morning session of to-morrow, until Tuesday morning.

There being no objection, leave was granted.

Mr. BARNARD asked leave of absence from the morning session of to-morrow until Tuesday next.

There being no objection, leave was granted.

Mr. KRUM asked leave of absence from the sessions of to-morrow.

There being no objection, leave was granted.

The Convention again resolved itself into Committee of the Whole, on the reports of the Committee on Finances and the Committee on Canals, Mr. SHERMAN, of Oneida, in the chair.

The pending question was announced to be on the amendment of Mr. Verplanck.

Mr. GRAVES—I do not rise to discuss at length the question before the committee, but, in the language of another, to define my position. Sir, the condition of the canals, their present capacity as well as their past, present, and future usefulness—the financial condition of the State, and the causes which from necessity have heretofore, and now, oppressed the State with taxation have all been elaborately and ably discussed, and

to such an extent that any member here who doubted his duty when this report came in should by this time have had his doubts removed. I cannot question the report of the Canal Committee because I have not heard from that committee, nor a single member on this floor, that the canal has not capacity, even in its present condition, to meet the present wants of the people of this State, and also to meet the demands of the great West, whose beauty, wealth and growth have been so graphically and eloquently described upon this floor. The arguments and reasons which have been so ably presented by the advocates of the enlarging policy do not satisfy me but that the canal, thoroughly repaired and properly manned, and its full and entire capacity enjoyed, would be sufficient to transport to and from the West all the produce and other property which, from necessity or convenience, seeks this avenue as the most easy and advantageous road to market. When the time comes for the required enlargement of the canal the evidence of the fact will be so clear that we shall not be called upon to discuss the proposition. Sir, in my opinion, it is our duty to pay our State liabilities at the earliest practical moment, unless our State revenues are required to be expended for the protection of property and the security of life and liberty. State integrity, pride, and public faith, admonish us to pay our debts. Prudence, interest, and a due regard to our national safety, require us to cancel this lien upon our present prosperity and future hope. Sir, the people have met the necessity of taxation because they loved our institutions, and no sacrifice was too great to be made to save them. And while patriotism and love of country so nerved the arm and so unstintingly bestowed their earnings when a high and noble duty was to be discharged and a glorious end obtained, yet prudence and just frugality must govern the people when they attempt to save from the income of the nation, over and above its legitimate expenses, money to lighten the burdens which national pride prompted us to create and moral honesty dictates us to pay. The loyalty and fidelity of the great body of the people cannot be doubted. And it cannot be doubted also but what all are ready to help pay this government debt—a debt which was the least of the calamity and sorrow of the war, although this left a burden to be continued during the will of the people, to perpetuate the remembrance of sorrows which desolated homes and filled the cup of affliction with the tears of regret. The magnitude of this burden was unnecessarily increased by men in public as well as private positions, who availed themselves of every opportunity during the war to steal from and rob the government. Yet, sir, the people will not repudiate; but they demand that faithful and honest men shall govern the public treasury, and that the taxes shall be equalized, so that all men and all classes of property shall pay their and its due share of the public debt, so far as it can be done without violating the public faith. Sir, the people look with suspicion upon the past and most earnestly protest against their liabilities being increased until they can test the fidelity of their servants and know that their money is applied to the purposes

for which it was intended. Experience, sad as it has been, shows us that an entire change is demanded in the management and control of the canals—that change of course is an experiment. This important public property which has contributed to the interest and credit of the State, has been, in the hands of the venal and wicked, an instrument of individual gain and private advantage—the public welfare has been ignored. It is now proposed to select new agents—clothed with new powers—with new responsibilities, by which the State hopes to realize all the advantages of capital well invested in the hands of faithful and trustworthy agents. No man believes but what the State has signally failed to obtain all the advantages which the improved capacity of the canal can be made to yield. Sir, I am in favor of putting the canal in such a condition that its full and entire capacity can be realized—in the hands of men whose honesty and ability will be proved and appreciated. When this trial has been fully and fairly made, if the interest of the State requires the now asked for enlargement, the State will not then be indifferent to its own interest or the claims of the West—this will be State wisdom and government economy—and satisfy the tax payers that the burden that is now upon them will, by strict prudence, gradually be made less onerous—when a new hope will stimulate them to a renewed confidence in the stability and supremacy of a republican form of government. I think the State has reason to be gratified with the surplus revenues of the canal from 1846 to 1866, although many obstacles have been in the way to the full enjoyment of all the benefits which the State should have derived from it. The exceedingly negligent manner in which it has been managed, laying aside the hordes of thieves which have infested it—on its waters and outside of its waters—who have been leeches upon the public funds, surfeited, and retiring for new leeches to come and get their supply, which you will find demonstrated all along the canal and through the State, by the fact that those who struggled with poverty have suddenly and miraculously become owners of large farms, or live in palaces with their coach and four, chuckling over their ill-gotten gains, with no honor but their pockets, and no reputation but such as the suppliant gives to wealth instead of merit. With such drains upon the income, such depletion of the life-blood of the State, I think the canal has nobly added to the increased and increasing revenues of the State. If the canal had been carefully managed, and the proceeds of it passed into the treasury of the State rather than into the pockets of the public villains who have poisoned the atmosphere where they have moved, the present power and advantage of the canal would not only have been fully felt and appreciated, but found to do all that its most sanguine and earnest friends could expect and ask for it. Even with this negligence and omission of duty, with willful sinfulness on the part of its officers and contractors, the canals yielded tolls from 1846 to 1866 to the amount of \$68,614,261.22, and during that time yielded a revenue to the State of \$48,547,449.09, over and above expenses, stealing and robbery. Now, the friends of the enlargement claim that this enlargement should

be made for these reasons: first, that the West should be accommodated in the transportation of its produce. Now, sir, competition in this country is truly the life of trade, and stimulates men to great effort and great success, and that competition is as certain as that advantage may arise from it. And I ask why is the railroad denounced as an unfair competitor? Has the railroad stolen its way into the field of competition, and is it an innovator upon the rights of the public, or a trespasser upon the interests of individuals? They only ask that they should come into the field of speculation unchained and untrammelled. Is not the railroad a public benefactor, and is it necessary to eulogize the canal and magnify its value and usefulness, by denouncing the railroads and charging them with being dangerous monopolies, which have laid their ax of prosperity at the root of the great tree of liberty, which we all desire to protect and guard. While no man on this floor estimates the value of the canal higher than I do, yet I am not prepared to say that it is the only valuable thing there is in this State of which we should be proud. Allow me to ask if one of the two, either the canals or the railroads in this State, were to be blotted out of existence, which of the two would this Convention annihilate. Need I wait for an answer? No man in this place would ask or suggest the idea that he could by any possibility get along with our advancement and progression without the railroads. At all seasons of the year they are instruments in the hands of the traveler, the speculator, the mechanic and the capitalist, to travel to and from their places of destination, and places where their money or capital is successfully invested. And this is done without trenching upon the individual rights of any, or in such a manner as to forbid the capitalist, the traveler, or even the laboring man from availing themselves of its ready and easy facility. Are we insensible to the great benefits which, as a State, we have derived from the railroads, and how many villages located upon the line of the railroads, as well as upon the line of the canals, have been populated and enriched by the railroads equally with the canal which has been said to have done so much for the State villages and the world generally. And, sir, when they talk of the great advantages which the canal gives to the city of New York, is it true that the canal has done all that makes the city of New York the great Gotham, and the pride of our State? What fills the city of New York with the speculators, the capitalists and the general buyers, who make the business men of New York so successful in their business relations, and what brings at all seasons of the year every thing which adds to the comfort, necessity and wealth of the city of New York, and that, too, under such circumstances as enriches the producer and seller, and adds to the wealth of the buyer and consumer? Has not this been done through and by the railroad? It is said this is a monopoly. So wealth is a monopoly in any form you may use it. The richest merchant who purchases the largest, the best and the most valuable stock to sell to his customers, has a power with which a man of more limited means cannot compete; and who has raised his voice

against the acquirement of wealth because when acquired it becomes a power in the hands of the possessor? And monopoly is not confined to railroads and to wealth—that is to dollars and cents. Education is a power and monopoly, which wisely and judiciously molds the public judgment in obedience to its salutary and wholesome requirements, giving tone to society and being irresistible in its efforts upon the moral tone and character of the community. And yet this power may be unsafely used and unwisely applied to the well-being of individual interest and public right. Sir, the concentration of wealth in an individual, by which he purchases and controls all the flour, butter, cheese or other produce in the market, is a monopoly, and one which materially and injuriously affects the community, and that part of it, too, which can ill afford to sustain the loss or bear the burden. And we hear no clamor about such a monopoly, although this is unlike the railroads, whose iron horse streaks with giant power and Galpin speed through all sections of the country, carrying wealth to all who had anything out of which wealth could be made, and affording comfort and convenience to the wide world seeking pleasure and happiness, and this too without being aided by State funds—or without stealing from the revenues of the State the fruits of hard toil by direct or indirect taxation. It has been said that it would be a picayune policy on the part of this great State to neglect or refuse to aid and enlarge the canal so as to make transportation quicker and cheaper upon it than any other way. Sir, what interest has the State of New York to spend her money and increase her debt to compete with any other mode of transportation? If the canal has, or can be made to have, capacity to carry all the property which shall seek that mode of transportation, and, by this, create a revenue to the State, why enlarge it to become a competitor of the railroad or aerial roads which may hereafter be constructed, and thereby add to our public debt, which is the money of the people, the control of which they would much rather assume than have it in the hands of those whose strict accountability has been somewhat questioned? A policy has been inaugurated in this Convention, attempting to cripple the enterprise of railroads, and restrict the combination of wealth under railroad powers—a policy in my opinion at war with the best interests of the State, and an attempted suppression of that spirit of emulation so essential to a competition which has thus far been the great lever-power by which the American people have been moved. We are to-day competing with all the forms of government of the old world, and rising higher and higher in knowledge and power as we give to the citizen the opportunity of elevating the scale of human government by hard and unrestricted competition. Sir, this government is one of freedom in the path of power, wealth and honor, and any attempt to change our national inclination and block the pathway of our citizens, individually or in combinations, will leave unreached that acme of national wealth, greatness and power to which we as a people aspire. Where, sir, would this free government have been to-day without the railroads—the mo-

napoly of which some in this Convention complain? Sir, if the railroads had not been at our command for the first two years of the rebellion, Jefferson Davis, instead of being the necessary guest of John Bull, would to-day be in the White House at Washington, and our national capitol filled with Representatives and Senators from the Confederate States; and Toombs calling his roll at the base of the monument of Bunker Hill. Sir, I am not in favor of making sympathy in behalf of the canal by charging that railroads are dangerous monopolies and unscrupulous competitors. The one must not be sustained on the ruins of the other—each should be managed and controlled by those having the power over them without interfering with the other, each laboring in the result for individual gain and public good—and if their experience and necessity shall demand that the capacity of the one shall be increased, I hope the intelligent, thinking, tax-paying people of this State will be found ready for that necessity as they have been for any emergency which has drawn upon their patriotism or their wealth. And to provide for such an important contingency I would incorporate in the Constitution the following article, or some like provision, clothing the Legislature with the requisite powers:

On or after the first day of January 1871, the Legislature are authorized and required, on the written certificate of the commissioner of the canal fund, to submit to the people the question of the enlargement of the Erie canal, in such manner and at such time as in the judgment of the said Legislature the public interest demands.

Mr. VERPLANCK—I yielded yesterday, the hour to which I was entitled to my colleague from Erie county [Mr. Prosser], as the subject under consideration was one he had studied for years and understood; and I was extremely anxious that his views should be presented in full to this committee. In the twenty minutes given me at this time, I shall be obliged to confine myself to a single view of the important question under discussion. I wish to present a somewhat new phase of this question to the committee. I want to ask this committee if they have considered what the effect of the action of this Convention will be upon the feelings and the conduct of the people of the West. I speak not, sir, of the people of western New York; I speak of the people of the great grain growing States of the West. When I had the honor to address the Convention, a few days since, upon the subject of limiting debate upon this question, I took the liberty of saying that the Erie canal needed increased capacity not some years hence but *to-day*; and the debate, from that day to this, has satisfied me that I was right in making that declaration. It is conceded that the produce of the West is carried on our canals at a speed (if that is a proper word to use in speaking of such motion) of from one mile to one mile and a quarter per hour. That this rate of speed cannot be increased with the present capacity of the canals is not controverted. At that rate of speed, with the present facilities for floating and locking boats of the size now in use, the price of transportation cannot be cheapened. And unless the cost of transportation can

be reduced, it is questionable whether we can keep our present trade, or increase the business of the canals. By increasing the capacity of the canals, so that they can be navigated by boats of 500 tons burden, the speed can be greatly increased, and the cost of transportation for boats of the present size, reduced one-third, if horse-power is used, and one-half, if steam can be successfully used. These facts being admitted, it is plain that the time has come for the inauguration of a policy which will give the canals capacity, not only to carry all the freights that shall come, but to carry speedily and at reduced rates, and thus invite and compel the entire trade of the West to pass over our canals. The canal revenues are derived from property coming from and going to the West, and yet my old and valued friend, the chairman of the Canal Committee, proposes to tax the Western States to pay not only the canal debt, but the entire debts of the State, amounting, as he claims, to \$65,000,000. What will the West say? What are they saying to-day? Have gentlemen of this Convention within the last few days, since the Finance Committee's report has been published, seen the western papers? The people of the West, sir, are in a flame to-day upon the subject of our action in reference to the Erie canal. Not only the debts for which the State are now pledged, but the \$18,000,000 which is not represented by any creditor, the \$27,000,000 of bounty debt, the \$218,000 contingent fund debt, are all to be a tax upon the West, and the people of New York are to compel the people of the West to pay their entire State debt. That is the proposition of the Finance Committee. The opinion of the men of the West is, sir—and I know it from talking with these men every day in Buffalo—that they have not sufficient facilities for transporting their produce over our canals, and that the price which the western produce is obliged to pay is exorbitant; and unless this Convention adopt some plan to relieve the produce of the West by giving it quicker transportation, and at reduced prices, I shall hereafter cross the street in Buffalo to avoid meeting Chicago men. This is not got up for the purposes of this Convention. My colleagues will tell you that for the last five years the people of Chicago constantly talk upon this subject when they come to Buffalo. They claim that the canal charges should not exceed the ruling rate of freights for the last ten years. Average freights have been, for the last ten years, about nine cents for wheat and eight cents for corn. One of these Western States, Illinois, has inaugurated a measure for increasing the size of the Illinois canal, and improving the Illinois river, so as to connect the Mississippi with Lake Michigan, at a cost of from ten to twelve millions of dollars, to be paid by taxation, thus opening a channel of communication for steam vessels from the Mississippi to Lake Michigan; and this is done, sir, not with a view of sending produce to the Mississippi, but with a view of bringing produce to Chicago to be shipped over the lakes and the Erie canal. The State of Wisconsin, sir, is engaged in opening an avenue from the Mississippi to Green Bay, by the improvement of the Fox and Wisconsin rivers, and thus another

channel of communication is to be opened by which we are to receive the produce of the Mississippi Valley. And more, sir; the Mississippi and Lake Superior railroad, now in course of construction (large gangs of men being to-day employed upon it), and which will be finished in two or, at most, three years, will open an outlet for the entire grain trade of Minnesota to Lake Superior. The Pacific railroad will, it is believed, be completed within five years, and open a great highway from the interior to the lakes. By affording cheaper transportation, the State of New York will have the entire trade of the valley of the Mississippi. This fact alone should admonish the people of the State of New York to prepare their canals to transport the produce of the Mississippi valley and the far West. The fact that these States are working for us should induce us to work for them. But, Mr. Chairman, the West is not entirely dependent upon us. There are other avenues which can be made available, if we fail to do them justice; and notwithstanding the remarks of my venerable friend from Schuyler [Mr. Magee] this afternoon, with reference to rival routes, it is a subject of some importance, and a subject upon which the business men of the West have been in convention and in consultation with the business men of Canada and the authorities of Canada, long before this Convention was talked of. The water routes by which to avoid the Erie canal are the lakes and the St. Lawrence, by way of the Welland canal; the lakes by way of Ottawa river; the proposed canal from Lake Huron to Toronto; the Kanawha route from Ohio to Norfolk, Virginia. And in passing, let me say, that I have learned within the last few days that an examination is now being made with a view of connecting Cleveland with Pittsburgh, and when the Ohio is connected with Norfolk, the whole trade of the West may go to Norfolk. I have not time to discuss the importance of this water communication. It is so important that French capitalists have offered to put a very large amount of money in it, and it will be a formidable competitor for the carrying trade of the West. One word in regard to Buffalo. Whatever is for the interest of Buffalo is for the interest of the State; whatever comes to Buffalo is sure to pass through the State and to the city of New York. We are in a better position than Oswego for the reason whatever comes to Oswego may go to Montreal; but everything that comes to Buffalo is sure to go to New York; and I beg New York gentlemen to remember that Buffalo has no interest that New York city has not in this subject. My time will not permit me to examine more than one of these rival water routes; and I select the route by the way of the lakes and the St. Lawrence. The Welland canal, connecting Lake Erie with Lake Ontario, is twenty-eight miles in length; its locks are 150 feet by 26½ feet, and it now passes vessels carrying 2,200 bushels of wheat, and 300,000 feet of lumber. Four of the locks of this canal are already enlarged to a capacity sufficient to pass any vessel floating in our lakes, and the remainder of the locks are to be enlarged, the prism widened, and deepened, and contracts for these improvements have been made. Thus you have ship-canal nav-

igation from Lake Erie to Lake Ontario. The length of the St. Lawrence canal is forty-one miles in the aggregate. The locks are now two hundred feet in length by forty-five in width, with twelve feet of water. They pass vessels of 800 to 1,000 tons burden; and it is estimated that, with an outlay of \$500,000, vessels of 15,000 tons can be passed through this canal, and then there is free navigation from Chicago to Liverpool, with the exception of sixty-nine miles of canal navigation for vessels of the largest size. More than this, sir; the tolls on these canals are merely nominal—less than one-third of the tolls charged on the Erie canal. Now how can New York maintain her position with such a rival? In one way only—by keeping up with the progress of the age, and doing what her interests imperatively demand, and improving, not five or ten years hence, but to-day, the capacity of her great canal. But the Finance Committee say "no." They would shield the treasury from dangers which do not even threaten it and will never come, and shield the credit of the State from injuries which exist only in their own imagination. Honest and able and sincere as I believe the gentlemen of the Finance Committee to be, I think they have greatly mistaken the necessity for canal improvement, the ability of the State, and the pride and patriotism of her citizens. It may be that they are right, and that I am mistaken; but if the policy of the Finance Committee is adopted, I predict that you will hear of meetings in the West, which, in numbers, respectability and influence, will surpass any meeting ever held on the continent of America; and the members of this Convention will find too late, that they made a great mistake in adjourning this Convention without providing a fair policy for the improvement of the canals. One word, Mr. Chairman in regard to the amendment which I had the honor to introduce, and I have done. The first section of the article reported by the Finance Committee undertakes to state the liabilities for which the canal revenues are pledged. In stating these debts and liabilities they state the amount of \$18,700,289.68 which has no creditor, and which is pledged to no one. For the purpose of correcting this section, and to remove this amount from between the canals and their improvement, I moved the amendment, and it is important that it should be corrected at this time because the subsequent sections are based upon it. The learned jurist from Onondaga [Mr. Comstock] has so ably discussed the object of this amendment, and has so conclusively shown the propriety of its adoption, that I propose to leave it to the enlightened judgment of this Convention, without another word in its favor.

Mr. CHURCH—I should not, Mr. Chairman, under any circumstances, after the great length of time which has been occupied in the discussion of this question—and especially after the time which I have occupied myself, feel justified in detaining the committee a great while in any further discussion. Nor shall I, in the few remarks I have to make, repeat or reiterate the views that I had the privilege of advancing a few days since. I expressed then my sentiments upon

the whole subject before this committee contained in the report of the Canal Committee, and of the Committee on Finance. I have no desire to repeat those sentiments. I have attentively listened to the discussion since that time both for, and against, the reports which are under consideration and I have seen nothing, and I have heard nothing, to change my opinion in the slightest degree upon the subject embraced in the remarks that I then made. The Canal Committee presented an amendment to the report of the Finance Committee—a project for enlarging the Erie canal by dispensing with double locks and making in lieu thereof single locks, so that boats of double the present length and one-third more width may be navigated upon the canal at an expense, as they say, of \$8,000,000. Now, sir, I claim, in the first place, that the discussion has shown that a much larger amount of work will be necessary to be done than that recommended by the Canal Committee. That if it is decided upon to make a full enlargement of the canal, it must be at an expense of not less than \$50,000,000. The enlargement of the Erie canal which we have just completed has cost the people of this State \$40,000,000, and a new enlargement of all its structures and the water-way cannot be made short of \$50,000,000, in my judgment; and I believe that is the judgment of every practical man who has examined the subject. I speak now, sir, of a full enlargement, such an enlargement as is authorized by the article reported by the Canal Committee. I claim, in the next place, that it is doubtful whether the financial plan of the committee would complete the work which they propose to do short of fourteen years, unless resort is had to direct taxation. Assuming that they are to expend only \$8,000,000—assuming that they are to seize money pledged to other purposes in the manner they propose to do—if the revenues of the canals shall be no more than estimated by the Finance Committee they cannot complete the work short of fourteen years. After the year 1870, when the work will not be more than half finished; they cannot get another dollar in ten years from that time unless they resort to direct taxation. I say, in the next place, that it has been demonstrated that the work is unnecessary, that the capacity of the canal is ample, and will be ample for an indefinite number of years in the future. I do not propose to enter into this subject again. It seems to me that no fair-minded man who has listened to this discussion, can fail to come to the conclusion, that the discussion which has been had settles the point that the capacity of the Erie canal is ample for all the business that we now have or that we probably will have, for years to come. And, sir, unless this work is clearly necessary, unless we are compelled by the most pressing necessity, no man can have the boldness to ask this Convention, under the financial circumstances by which we are surrounded, to enter upon a new course of debt and expenditure. The onus lies upon the Canal Committee and those who act with them, not merely to make a doubtful question, not merely to raise a suspicion whether there may not be detentions occasionally, but to make a clear and undoubted case of overruling neces-

sity, before they ask this Convention to enter upon it. They have failed to do it. Gentlemen of the greatest ability—gentlemen for whom I entertain the highest respect—have entered into the discussion of this question; but they have failed to establish that important and fundamental fact—that there is any necessity for this work. In the next place, sir, I claim that it has been demonstrated that if the work which the Canal Committee profess to be adequate was completed, it would be of no practical utility, that it would not increase the capacity of the canal nor cheapen transportation. They would take a very good canal capable of doing all the business brought to it, and deface and deform its structure, diminish its usefulness, and make of it a very poor canal. Unless this work is desirable, not only, but unless it would have the effect to cheapen transportation materially, unless it would be of great service to those who transport property over, and navigate these canals, it would be worse than folly. Yes, sir, it would be criminal in this Convention to inaugurate the scheme; and I submit again to the fair-minded men of this Convention, who have sat here as judges or jurors to listen to the discussion, whether this proposed scheme, in their opinion, would cheapen transportation or not. It does not follow that because you may cheapen transportation by one enlargement of a canal you can therefore cheapen it by another enlargement of the locks upon the same water-way. It has been established that this result does not necessarily follow. I do not believe it would follow in this case. I believe, sir, if you put your boats, two hundred feet long and twenty-three feet wide upon this water-way, that you would obstruct the navigation to an extent which would decidedly and materially increase the expenses of transportation instead of diminishing them. But there is one thing which they would accomplish with the certainty of death by this project. While they have not shown that it is necessary, nor that it will be of any practical utility, they have shown that if we undertake it we shall perpetuate the taxes and tolls upon the commerce that passes over the canals. Yes, sir, perpetuate them to all time; for I tell you if you enter upon this scheme you will not get out of it without rolling up a debt which will perpetuate the tax upon commerce for years and years to come, if not for generations to come. I warn the friends of the canals now (and I claim to be one of them), in all sincerity not to enter upon any further scheme of debt for the purpose of improving your canals. You have an opportunity to free your canals from debt and from tolls. I doubt, sir, whether you will ever have another opportunity. A few short years will roll round and our public debt may be paid by economy, by taking care of the canals and then you can remove the tolls or taxes upon your commerce. It is the only opportunity, in my judgment, that you will have for a century to come; and I ask you to avail yourselves of this golden opportunity to secure free navigation. My friend from Erie [Mr. Verplanck] has told us of the people of the West—of their being in a flame; of their holding public meetings; of the expressions of the public press. Why, sir, go

to the people of the West with this arbitrary provision on the part of the Canal Committee, requiring the tolls to be kept up to the present high standard, for an indefinite number of years, and then present them with the report of the Finance Committee, which if carried out, will in a few years pay the debt and remove the tolls and ask them which they prefer; and I tell you the voice of the West will be in favor of a free navigation.

Mr. VERPLANCK—Will the gentleman allow me to interrupt him? I do not approve of that part of the report of the Canal Committee, which proposes to keep the tolls at their present rates, and shall propose at the proper time an amendment upon that subject. I am not wedded to the particular plan of improvement proposed by the Canal Committee and if a better plan is suggested, I will readily adopt it.

Mr. CHURCH—It is very likely, sir, that the people of the West would be willing that that State of New York, should expend its bottom dollar, and exhaust its last resource of credit for the purpose of enlarging these canals. They would do this for the chance, for the mere opportunity of being benefited in any degree whatever. But, sir, if you present to the intelligent men of the West, the choice between these two reports—the one to pay the debt and remove the exactions from commerce, and the other to pile on the debt, with at least doubtful results, so far as practical utility is concerned, I tell you that with one voice, they will determine to take the report of the Finance Committee. Again, sir, the Canal Committee proposes to do this work by seizing the revenues “sacredly” pledged to the public creditor for the payment of existing debts—postponing the payment of such debts; changing the constitutional priority of liens upon the revenues and increasing the public burdens. But the principal object of my rising, Mr. Chairman, was for the purpose of noticing a few points which have been advanced by various gentlemen during the discussion, and which I shall notice very briefly; and in the first place in relation to these “advances,” as they are called—advances made by the people of the State by direct taxation upon their property since 1846, used in enlarging the canal and in paying canal debts which amount to \$14,000,000, and which, with simple interest at five per cent, now amount to \$18,000,000. Sir, in the first section of the article reported by the Finance Committee, this is stated not as a debt of the State, but it is stated precisely as it is in the Constitution—as a liability for which the canal revenues are pledged. The gentleman from Erie [Mr. Verplanck] has moved to strike out the statement of that liability from the first section of the article reported by the Finance Committee; and my esteemed friend from Onondaga [Mr. Comstock] has come forward to make an argument, a constitutional argument, in favor of the motion of the gentleman from Erie [Mr. Verplanck]. Upon legal or constitutional questions ordinarily, I should feel disposed to take the opinion of that eminent gentleman without even an examination on my part. But, sir, I must be permitted to say that that gentleman never made a greater mistake in his life than when he undertook to prove to this Convention—

not that we should waive these advances, not that we should postpone them, not that we should release them, but, that there is no pledge in the Constitution to return them to the treasury of the State for the general use of the people. I understood that gentleman, sir, to construe the Constitution to mean that there was in fact no promise contained in it ever to return these advances to the treasury of the State for the use of the people.

Mr. COMSTOCK—Will the gentleman allow me to interrupt him a moment? He is mistaken in that. The Constitution says they shall be paid into the treasury of the State. All that I said was that when they reach the treasury of the State they are for the use of the State, canals or anything else.

Mr. CHURCH—Now, sir, I undertake to say that the true construction of the Constitution of this State is, that these advances are to be returned to the treasury of the State for the general use of the people of the State as distinguished from the use of the canals. And if the committee will bear with me one single moment they will see how perfectly clear it is, that that was the intention and meaning of the Convention in framing the provision. The State has various funds. It has the canal fund. Moneys kept in that fund are kept entirely distinct from the other funds of the State; they can be used for no purpose except for canal purposes. We have the school fund, kept entirely distinct from all other funds of the State, the moneys in which can be used for no other purpose than school purposes. So there is the literature fund, the moneys in which are only to be used for purposes of supporting academies and colleges. In relation to all these funds, the State stands as a trustee holding them and administering the property and money belonging to them, for special and particular purposes. Then, sir, it has another fund called the general fund, the moneys in which are to be used for the general purposes of the people of the State, and that is the only fund under our system, from which the people or the Legislature have a right to appropriate money to their general use. Let us see what the Constitution provides. In the first place, it sets apart \$1,700,000 to pay the old canal debt of 1846; after that debt is paid, it sets apart \$1,500,000 to pay the general fund debt; after that, by the amendment of 1854 it sets apart enough to pay the interest and sufficient to pay the principal of the enlargement debt in eighteen years. Then comes section 5 which is the section under consideration. The first part of that section provides that if the sinking funds, or either of them provided in the financial article shall prove insufficient to enable the State, on the credit of said funds, to borrow money to satisfy the claims of the creditors of the State as they become payable, the Legislature shall, by equitable taxes, so increase the revenues of said funds as to make them sufficient, perfectly to preserve the public faith. That provision, sir, authorized the borrowing of money to supply the sinking funds and it was known as well in 1846 as it is now, that those sinking funds could not be supplied from the revenues of the canals, and that defi-

encies must be made up by taxation. Besides, the whole taxing power was left unlimited and unrestricted in the Legislature. The Legislature could not only tax to supply the sinking funds, but they could tax for carrying forward the work as it progressed—a power which they have freely exercised; and then came this provision: "Every contribution or advance to the canals or their debts from any source other than their direct revenues shall, with quarterly interest at the rates then current, be repaid into the treasury"—for what, sir? Be repaid into the treasury for what? For the use of the canals? For the use of the schools? For the use of the literature fund? No, sir; it shall be repaid into the treasury, "for the use of the State," out of the canal revenues. Now, sir, if that does not mean that this is to be paid into the treasury for the general purposes of the State, as distinguished from the special purposes to which the canal, school and literature funds are devoted, then there are no words in the English language that can express it. Why, sir, those advances are required to be paid with quarterly interest at current rates. Does it not deal with the question as though the canal was a debtor to the general treasury of the State, requiring not only that the principal shall be returned, but that interest also, at current rates shall be paid? That they were to be paid into the general fund there can be no question. I do not mean to say, sir, and I have not said, that when you get them back into the general treasury, into the general fund, but that the Legislature may have power, if there is no restriction in this Constitution, to dispose of those advances as they see fit. They may possibly donate them; they may give them to schools, to charities, to canals, or to anything else they please. But, sir, that these moneys are to be returned to the treasury of the State for the general use of the State—into the general fund of the State—is as clear as anything can possibly be in this Constitution. If they are not returned the people can never receive any benefit from them except for canal purposes. And, therefore, it is very improper and very inappropriate to strike this statement out of this first section. If you choose not to pass the sixth section of this article which requires a particular disposition of these advances—if you choose to leave these moneys in the treasury subject to the will and power of the Legislature—you can do so. But let us at all events tell the truth in our Constitution. Let us tell the people that this amount of advances has been made and that there is so much due from the canal revenues to the general treasury of the State. That is all there is in the first section on the subject. It is stated precisely as it is stated in the Constitution—advances by taxation to the canal debt and for other canal purposes. More than five millions of dollars of these taxes have been paid directly for the enlargement of the Erie canal besides all that has been paid to other canals and for the canal debt when the revenues were not sufficient for that purpose.

Mr. VERPLANCK—Will the gentleman allow me to ask him a question?

Mr. CHURCH—Certainly.

Mr. VERPLANCK—Have not the Erie cana-

revenues returned anything that has been paid on her account out of that fund?

Mr. CHURCH—No, sir, they have not; not one dollar—not one dollar.

Mr. VERPLANCK—The gentleman is mistaken.

Mr. CHURCH—No, sir; not one dollar has been paid by the canals since 1846, except what the canal revenues were bound to pay for advances prior to 1846. In 1846 it was claimed by the Comptroller of the State, and by Mr. Hoffman, that the canals were then indebted to the general fund in the sum of thirteen millions of dollars. They reckoned interest upon the amounts quarterly, I think, as the present Constitution provides, but which we have waived. To settle that debt of thirteen millions of dollars, all that was required of the canals was to pay the general fund debt, less than six millions of dollars, and to pay the State a perpetual annuity for the support of the government of two hundred thousand dollars a year. That was the settlement, and I submit to any gentleman if it was not a fair and liberal settlement, so far as the canals were concerned. For as many as six years since 1846 the canals have failed to pay the two hundred thousand dollars a year, and in the article the Finance Committee have reported, they have waived its payment altogether, in future. Now, sir, not one dollar since 1846 have the canals contributed to the general fund, but the people of this State, since 1854, have been taxed year after year from one million to two millions and a half dollars a year for canal purposes. The whole people of the State have been taxed, and have been taxed under this pledge that the money should be returned into the treasury. The people of St. Lawrence county as well as the people of Erie and of Ulster and Schoharie, as well as Monroe and Orleans, have had to put their hands into their pockets and contribute to this taxation, and they did it cheerfully, because of this pledge that it should be returned for their use to the treasury of the State. I ask, in the first section, that you shall merely state the amount thus contributed, with interest, not as required by this Constitution, but with interest at five per cent—simple interest, not compound interest. Though you may ask the people to give it up, or postpone it; though you may release it, yet, in the name of justice, I ask you not to deny the debt. If you have a debtor that cannot pay, you may be willing to forgive him the debt, but you would call him a rascal if he denied the obligation. I ask you to acknowledge that the debt is due; that is all I ask in the first section. Afterward, if you propose to ask the people to release it, do so, but let us tell the truth. Much has been said in relation to the enormous profits of the canals; and my esteemed friend from Rensselaer [Mr. Seymour] talked glowingly and even poetically (though not as much so as some of the other gentlemen, perhaps) about the enormous profits which the canals were pouring into the treasury of the State. Sir, let us look at these things in the light of truth, and not of fancy. We are here not to indulge our imagination, or to become excited and crazy over the glory of the western country, or the Erie canal. We are here to deal

with realities; and I assert, as a fact, that your canals were never as much in debt as they are to-day, with all their revenues—never from the time the first shovel was put into the ground, were they indebted as much as they are this day. My friend from Onondaga [Judge Comstock] told us last evening, or the evening before, I forget which, in his remarks, that the canals were only in debt seven millions of dollars after paying for their construction, and everything else; and that if the accounts were correctly made up they would not owe anything. Now, sir, let us not deceive ourselves on this subject. I have heard this statement made before, and in the early part of this Convention a resolution was passed, on my motion, directed to the Comptroller and to the auditor of the canal department, for a statement showing the account from 1817, giving us the debt and credit between the canals and the general funds of the State. I have had some trouble to get that report, but it came in this very morning, signed by the Comptroller, who represents the general fund side of the account, and by the auditor, who represents the canal fund side of the account, and the balance, as shown by that report, in favor of the general fund is twenty millions of dollars. In the Constitutional Convention of 1846 a full statement was made up to that time, but gentlemen are constantly saying that the canals were cheated in that settlement. I deny it. The canals got the best of the bargain, and I therefore went back to 1817 and took the accounts from the beginning of the canal system to the present time at simple interest only—most favorable for the canal system, and the balance against the canals is as I said twenty millions of dollars. Now sir, you may give these advances to the canals, you may say they have rendered benefit enough to the State to pay them; I care not what you do about it, but let us tell the truth. That is all I ask. Some gentlemen have told us that the report of the Finance Committee "ties up the State" for twenty years. This has been a favorite argument of many gentlemen against the finance report. Tied up? Why sir, there is not one word of truth in it. The people of this State tied up so that they cannot enlarge the canals—so that they cannot do anything? What do gentlemen mean when they talk about the people being tied up? What is a Constitution? It is nothing more nor less than a power of attorney from the people of the State to the Legislature. They authorize the Legislature to exercise all legislative power except as to certain things which they reserve to themselves. This article proposes, with the other articles which have been or that will be adopted or proposed in this Convention, to confer all legislative power upon the Legislature, except that when they propose to expend a large amount of money—when they undertake a scheme which may draw largely upon the people by taxation, when they undertake to enlarge the canals or to enter into any other project which involves a heavy expenditure of money, they shall not do it without the consent of the people. That is all there is of the argument; that this article ties up the people for twen-

ty years. You may enlarge the canals with the consent of the people, but you shall not do it without. Within one year from next winter if we should adopt this Constitution, any clause of it may be altered, and any work authorized, any expenditure made with the consent of the people. I submit to the members of this committee, whether that is not right? Have you not all said that it is unsafe to leave these questions of expending money to the Legislature? Have you not all said so—I have said nothing about it, but have you not all told us that the Legislature was corrupt? That it was not safe to leave questions of money and expenditure to them? And has it not been reiterated in this House until it has almost become a by-word? And now following, out what has been told us from the beginning of the session of this Convention, we say the Legislature shall not enlarge the canals—shall not authorize the expenditure of five, ten, twenty or fifty millions of dollars without the consent of the people. The people can do it at any time. Does my friend from Rensselaer [Mr. Seymour] desire the Legislature to force this project upon the people without their consent? Does any gentleman in this committee desire it? If he does not, then there is no objection to the article which has been proposed by the Finance Committee. Now, sir, in relation to the financial project of the Canal Committee. The gentleman from Ontario [Mr. Lapham], the gentleman from Ulster [Mr. Schoonmaker], and the gentleman from Oneida [Mr. T. W. Dwight], have all attempted to justify the financial scheme proposed in the article of the Canal Committee. Sir, am I so mistaken about the duty and obligations of a government? Can any government take moneys solemnly pledged to a public creditor—abstract them and expend them for some other purpose with impunity? Is it possible that we have arrived to such a state of demoralization that gentlemen of the highest character and standing will stand up here in the face of this Convention and the people of this State, and declare that it is of no consequence to the reputation of a State that you pledge revenues for a given purpose, borrow money upon that pledge, and afterward take them away and expend them for something else? It was intimated by the gentleman from Ulster [Mr. Schoonmaker] and the gentleman from Oneida [Mr. T. W. Dwight], that these debts were contracted before 1846. With great respect to these gentlemen, it is not true. Every one of these debts, with the exception of one insignificant amount, has been contracted since the Constitution of 1846. Sir, I have an official statement of the old canal debt; a debt existing in 1846 it is true, but that debt became due, and there were no moneys to pay it; and your public officers were obliged to go into the market and borrow money and contract a new debt to pay it, and when they contracted that new debt, they did so under the pledges of the present Constitution, and the whole of that debt has been contracted since 1846. The same is true, sir, with reference to the general fund debt except about six hundred thousand dollars. With that exception every dollar of the general fund debt now exist-

ing has been contracted since 1846. And I recollect well, when I had the honor to occupy the position of Comptroller of this State, a portion of that debt became due, which bore interest at six per cent, and I undertook and succeeded under, the pledges of this Constitution, in obtaining a loan to pay it at five per cent interest. That debt is a lien upon the canal revenues, according to the Constitution, next after the old canal debt, but these gentlemen take away that lien and place \$10,800,000 of other indebtedness in priority over it. Have not the creditors holding the old canal debt and the general fund debt, a right to complain? Is it true that the Constitution is a mere private affair between the people and the Legislature with which the public creditor has nothing to do? When the creditor is about loaning his money, has he not a right to look at our fundamental law, the organic law of the State, which has been ratified by the people to see what provision we have made to pay the debt? And when he looks at it, has he not a right to rely upon it? Is there any people upon the face of God's earth that can maintain their reputation unless they fulfill such pledges and obligations? Why, sir, take a private individual—let him incur a debt, and then transfer property to a third person to pay it, and attempt to reclaim the property, would not a court of equity interfere to prevent him from doing it? But, sir, the State stands upon an entirely different footing from an individual. If I have a note for ten thousand dollars against my good friend Magee here, a valid note, I would not care the snap of my finger whether he violated his agreement or not, because I would know that I could resort to the courts of law and obtain payment in a very short time. Not so with the State. The sovereign State of New York cannot be sued. Its obligations cannot be enforced. They rest with the honor of the people, nothing else. If, in the money markets of this country or those of the old world, it should be known that the State of New York was in the habit of pledging revenues to the payment of its debts, but that no reliance could be placed on those pledges because they were also in the habit of disregarding them, would it not tarnish the fair fame of this State, which has stood so high in this country and in every country? I say, and I mean no disrespect to those gentlemen who argue upon the other side—no disrespect to the Canal Committee, that such a violation of plighted obligations adopted in this Constitution would be a disgrace to the Convention, and if adopted by the people of the State, would be a disgrace to them. The gentleman from Ontario [Mr. Lapham] has no right to complain because I denounce a measure which he introduces, upon its merits; he has no right to present any personal grievances upon the subject; it is perfectly legitimate for us to discuss and properly characterize any measure presented by any gentleman of the Convention; and it is inappropriate and out of place for him to whine about it or to present it as a personal grievance. My remarks have nothing to do with the members of the Canal Committee. It is the measure, the merits of the measure only, that I am speaking of. Now, sir, the State of Massachusetts has never been a favorite with me. I believe I have

never agreed with her people in my life politically. I believe that the majority of her people are arrogant, intolerant and supremely selfish. But, sir, truth and justice demand that I should say that when others faltered, when others became demoralized by surrounding influences, Massachusetts stood firm through all the troubles through which we have passed during the last few years. Sir, she stood firm and maintained her obligations to her public creditors, and paid them in gold and silver, while New York, I grieve to say it, with her proud motto of "Excelsior," faltered and failed to fulfill obligations which she was under to her public creditors. Massachusetts to-day stands on the very pinnacle of fame in point of financial integrity and credit.

Mr. E. BROOKS—And California, too.

Mr. CHURCH—Yes, and California, too, our young sister on the Pacific from whom we have just heard a voice that I hope will resound through the length and breadth of this land. [Laughter.] I beg pardon for this political allusion. You may charge it to my friend [Mr. Brooks], who reminded me of it at the moment. [Laughter.] Now, sir, I have one word to say to my esteemed friend, Judge Clinton, of Erie, and I say it in all kindness, for it is impossible for one to feel otherwise than kindly toward that gentleman. But I desire to say to him that in my judgment he is doing injustice to the memory of his honored father, when he advocates such a proposition as was reported by the Canal Committee. De Witt Clinton, in the inauguration of this system of public works, and in carrying them forward, never advocated such principles of finance as are contained in that report. Upon all questions of finance, no man ever occupied the executive chair who in all respects regarded more scrupulously the principles of public integrity than De Witt Clinton. In relation to advances to the canals you will find, in his message of 1817, I think it is, when the salt duties, the auction duties, and other outside means of the State were first appropriated to the canals, he announced the doctrine which has now become a part of your constitutional law, that those advances should be returned to the treasury of the State as soon as the revenues would permit. Yes, sir, De Witt Clinton was the author of the doctrine that the canal fund should be kept separate from the other funds of the State, and that all advances to them should be repaid. He was opposed to taxation for internal improvements, as announced in several of his messages, and he was in favor of paying all debts at the earliest possible period; and he refused to go on with the work until means were provided to not only perform it but also to furnish a sinking fund to pay the interest and the principal of the debt within a limited period. Those were the financial principles of De Witt Clinton, and I think his distinguished son is doing his memory injustice when he uses his name to support and sustain a project which would bring eternal infamy upon the people of the State. The Finance Committee made a statement of the debts of the State, of the amount of taxation which rested upon the people, and they did this in no spirit of partisanship, as some gentlemen seem to have supposed; they did it as

a legitimate argument against entering into doubtful schemes of expenditure, and I submit to any fair-minded man whether it was not entirely legitimate. If we were out of debt, if we had no taxes to pay, we might be more willing to enter into this scheme than we are now; but being involved in a large debt, and overwhelmed with taxation, I say that it is only upon the clearest necessity that we should authorize any additional expenditure. And it was for that purpose, and that only, that we presented that statement. But, sir, I wish to call the attention of this committee to that statement. Several gentlemen have said that it was extravagant, that the amount of taxation was extravagant; but no gentleman in this Committee, or in this Convention has undertaken to show that one single item stated is too high; and I undertake to say that no gentleman can. The statement of the amount of taxation upon the people of this State is true. I am sorry to say it is true, but duty demands it.

Mr. VERPLANCK—Will the gentleman allow me to say a word? The friends of the canals do not complain that you put all the figures making this great amount of debt in your report, but their complaint is that you seek to put them between the canals and their improvement. That is the trouble.

Mr. CHURCH—I do seek to put them between the canals and an improvement which you have failed to show to be necessary, and have failed to show will be of any practical utility. We put it forth as an answer to doubtful projects, and in that view I submit, we have a right, a legitimate right, to put it forth. Now, sir, the gentleman from Ontario [Mr. Lapham] told us that the people were active, that they were every where enterprising, that he found them busy; that they were building up villages, and all that. So they are, Mr. Chairman—they are obliged to be active to meet these great burdens—they are obliged to work. But the gentleman should recollect that we are in an artificial state of activity. He should recollect that we are living under a depreciated paper currency; that all values are inflated; that the whole currency of our country has become expanded and enlarged to a degree that is fearful for any sound or safe man to contemplate without fearful forebodings. It is an artificial and unnatural excitement which the gentleman sees everywhere. We must return sooner or later to a specie standard, and then let me ask my friend from Ontario [Mr. Lapham] whether he believes the people of this State can pay one hundred and eighty millions of dollars a year taxation—not whether they will, but whether they can? I tell you there is no people on the face of God's earth that can endure a permanent taxation of four per cent upon the whole value of property, nor even three per cent. It cannot be done, and your taxation to-day is over eleven per cent upon the assessed value of the property, and as much as six per cent upon the real value. Now, sir, I am opposed to public debts as a general principle. I believe that no government should ever incur debts except for purposes of protection. In case of war it is necessary, but aside from that I do not believe any government is justified in saddling posterity with

public burdens. A public debt is not a blessing; it is a curse. It grinds the poor man to the earth; it destroys his manhood, and makes him both a pauper and a slave; it snatches the bread from his hungry children and consigns him to an untimely grave. Why, sir, look abroad and see these mighty burdens upon the back of industry in the Old World. How do they keep the people down in these countries? It is by means of this withering, accursed taxation which saps the vitals and manhood from the people. If some power would knock the shackles of debt and taxation from millions of poor people in the Old World they would rise up reinvigorated, assert their manhood, and sweep every despotism from off the face of the earth. We have commenced a career which must produce like results. The rich and the wealthy can pay their taxes; it is no sacrifice to them; it is the poor men of the country who suffer by taxation. You add largely to the number of paupers every year by these systems of taxation and you make it impossible for men to rise in the world. Public debts are especially against the genius of a free government. Sir, I believe in the principles enunciated by Jefferson, "That a public debt is a calamity and a curse, and a perpetual blight upon honest industry and productive labor," and with Daniel Webster, who said "that it is the most effectual of inventions to fertilize the rich man's field by the sweat of the poor man's brow." These are the principles I entertain, and they are the principles that will live. Yes, sir, when you and I and every man within the hearing of my voice shall have passed away, these principles will still remain interesting to your children and mine. And if we stand firm, if we plant our Constitution upon the rock of eternal truth and justice, uninfluenced by temporary clamor or local interests, unborn generations will rise up to call us blessed.

Mr. BEADLE—Mr. Chairman, as a juror rather than as a judge, I have sat and listened with great satisfaction to the honorable gentleman that has just taken his seat. It has occurred to me, sir, as I listened to his very somber discourse, that he has been sitting in a long night of darkness, and, like his friend and neighbor by his side, has been looking westward for the light of the political sun to rise, and all the scintillation that we have got during this discussion has been from the sight of that political sun that he saw rising in the West. Sir, the greater part of the remarks to which we have listened have been upon the subject of debts. Debt and taxation have been held up to this Convention as if the subject was entirely new—something that had never been brought to the knowledge or experience of the members of this body. Now, Mr. Chairman, I have felt somewhat of debt in my lifetime—I know somewhat in my person of its grinding effects. I have passed through times of pecuniary trial and trouble—and know somewhat of it—and with all my experience, I cannot consent to believe that debt is an unmitigated calamity. I cannot consent to believe that the great State of New York, with a property that is yielding a yearly revenue of some three millions of dollars, is in a state of hopeless bankruptcy. Why, sir, we have a little, insignificant incorporation, so to speak, in

this State, one that has been bandied and knocked about this hall here, and that corporation owes to-day \$14,000,000. Have they gone into bankruptcy? Do they propose to take the benefit of the United States bankrupt law, because, forsooth, they owe \$14,000,000? Not a bit of it. Even the State of New York, in its credit and ability to pay seems to be reduced lower to-night, in the estimation of the honorable gentleman, than my friend here from Schuyler [Mr. Magee]. He prefers his note for \$10,000 to an obligation against the State of New York. Why? Because he thinks John Magee's obligation is good. Well, sir, I think the Convention knows somewhat of debt as well as myself. Let me refer to the subject-matter, and the impression made upon my mind as a juror, as the honorable gentleman, I suppose, classes myself and many others, of those who have chosen to be silent members here. My impression from his remarks is, that these canals are fraudulent institutions with reference to the State—that they are in a state of bankruptcy to it, and this Convention is after them by every means in their power to bring them to justice, and compel them to liquidate their obligations to the State. It looks to me as if the canals of the State of New York were in the position of a man whose estate had gone into the hands of his executor; for here an inventory has been made and a balance sheet struck; but unfortunately they gave us but one side of the balance sheet. Nothing is given to the credit of the canals. Why, sir, we have a property there worth \$50,000,000—why don't he say something about that? But he proposes that the account shall be closed at this moment, and we shall say what the canals have paid to the State and what they fall short of paying, from any expenditures that have been put forth on them, and they shall offer to be put in bankruptcy. Well, sir, I object to this whole thing. And I object furthermore to this means of trying the benefits and advantages which we derive from the canals. We do not weigh human actions in such a manner. You do not go to the surrogate's office to find what benefit such and such individuals have conferred upon the community, when you look over the inventory of their effects and see that they died in debt or with estates of thousands of dollars. I object to bringing into this Convention the scales wherewith merchantmen weigh their shekels, and on those place our canals and public works, and test them in that wise. I say, sir, look at the benefits, look at the advantages, see what benefits and advantages the State of New York has derived from these canals, and give them credit for what they have done. But, sir, if they are to be weighed in this way, let us see what they have done. Look out upon the State of New York as it was in 1817, and compare it with the State of New York in 1866. Look at the improved lands, the farms, the towns, the villages and the cities that have grown up, and become valuable communities and taxable to the State, thus enabling the people to pay this immense amount of taxation, which the honorable gentleman has so feelingly and freely alluded to. See what the canals have done for this State. Ay, sir, and let me at this moment call the attention of the members

from the city of New York to the fact, that every dollar that has been expended on the canals of this State has added wealth to that island of Manhattan. Every rod of canal, and every improvement that has been put forth in the State of New York, has added wealth, and dignity, and importance to that great commercial emporium. But, sir, there is an aspect in which these canals have not been viewed, and in my estimation it is still an important one, and one which I wish to bring to the consideration of this Convention. There is a portion of the public works of this State to which but little allusion has been made in the discussion upon the questions before us to-night. And these are, sir, familiarly styled the lateral, but more properly the branch canals of this State. I reside upon one of these unfortunate paupers, or, as my learned friend styled them a few days since, vagabond canals. It has been the pleasure of the Comptroller and auditor of this State, in making their reports in regard to these unfortunate pieces of public property, to state particularly that they are still in debt to the State, that they have never furnished any amount of money to the public treasury, for all that has been expended upon them. Let me call attention—for I wish to speak more in behalf of that species of public property than anything else—during the few minutes that may be allotted to me; let me call attention to, and speak in behalf of the Chemung canal. The act which authorized the Chemung canal, which gives thirty-nine miles of navigable waters, with fifty-three locks, authorized its construction, if reliable, competent persons would enter into an agreement to build it for \$300,000—fifty-three locks and thirty-nine miles of navigable waters in the State of New York. Is there a reasonable man in this Convention that believes a canal can be built for that money? Not a bit of it. And then why is it that, from year to year, that canal is charged with expenditures upon it, as if it were seeking to draw the life-blood out of the public treasury? It never was built, it never could be built, for twice that money. And hence it has been constantly asking for additional improvements, and has been a continual expense to the State by reason of its imperfect construction. But the idea I wish to bring to the attention of the Convention is this—that there was lying a large extent of country bordering upon the Pennsylvania line, almost entirely inaccessible. There was in it a wealth of material for building—timber second to none in the State. Immediately adjoining were the coal fields of Pennsylvania, ready to furnish their wealth of fuel to the State of New York the moment there was accessible means of access to the markets of this State. In looking over the tables furnished from the auditor's office, I find that that single canal has furnished to the productive wealth of this State, in lumber and coal, \$37,000,000—\$37,000,000 that have gone to cheapen the fuel consumed in our dwellings and manufactories—\$37,000,000 that have gone to cheapen building material in the State of New York, and \$37,000,000 that have gone to increase the productive wealth of the State—property rightly and correctly to be accredited to the Chemung canal. But more than that, sir; the

account of the Chemung canal is not to be closed to-night. She is now ready and prepared, with very slight improvements, to bring your fuel from the coal mines of my friend [Mr. Magee] and others, that will warm up the whole North. He has the coal ready to send, and the State of New York has the canal, ready now just when it is wanted. Then, sir, why call it a pauper, why call it a vagabond canal? Give it credit for what it has done, and what it is ready to do, and you have an improvement that the State of New York should be proud to honor, and proud to aid. This is no time to raise the cry of "taxation," when it is ready and able to earn more for you than she has ever done before. But more than that, sir, that wilderness country has become peopled with a thriving population; and when the call came in 1861, and in 1862, and 1864, for men to go forth to defend the institutions of this country, ten thousand men came from what had recently been the wilds of the south and west, and formed a breastwork that stood between this country and secession; and, sir, they were counted second to none in that contest. Why, sir, all the scales that Fairbanks ever made are not sufficient to weigh the wealth and the value of the population that now inhabit a county that, but for these improvements, would be a wilderness to-day. The gentleman from Orleans [Mr. Church]—and I have not quite done with his taxes, for he says we are overloaded with taxes beyond any country in the world—if he will add to the assessment, property that is actually in the State of New York, he will find that, proud as they may be, there is no country on the other side of the Atlantic that pays as small a percentage tax as the people of New York. I had a conference with one of the State assessors, and was informed within the last week that not to exceed one-fifth of the personal property and one-third of the value of real estate of this State ever gets upon the assessment roll. Add to the assessment roll property that belongs to it, as I said, and you will find that we are paying less per cent of taxes than any country east of the Atlantic. In the discussion which has gone forward in the past few days upon this subject if it has not caused, it has certainly developed very widely different views as existing between members of this Convention with reference to the public works. I had supposed that there was in the minds of the people of this State no diversity of sentiment with regard to the public works—that, under all circumstances, they were to be fostered as the jewels of the country, and although it may be right and proper when we receive the report of the financial officer, to look after all expenditures and receipts connected with our public works, yet when we sit down to deliberate over the fundamental law of the country, and to look over its property and prospects, we should not begin to reckon up the expenditure of moneys that have been put on the public works any more than would the family that sat down to look over its jewels, reckon up the cost and add with it, year by year, the interest upon the diamonds or upon any of the jewels they examined, charging the accumulated amount and asking for returns, no more than you would if you went by

here and looked upon these public buildings and asked what this building and the building across the yard had contributed to this State. I apprehend if this building had been weighed by the advantages it has given to the State it would suffer quite as much as some other of its public works. In this discussion, as I was about to say, there has been adduced an array of what are claimed as facts seemingly in direct contradiction. On the one side it has been alleged, and proved as supposed, by the facts adduced that our public works and the canal in particular, that reaches from Buffalo to the Hudson river, has entirely adequate capacity for all the business that is likely in coming years to be thrown upon it; and the Convention is called upon to act in view of facts produced upon that side of the question. And the opposite side, with equal earnestness, have put forth their views and statements upon it, which go to show that an immediate enlargement of the canal and of the locks on the canal, and a change in the manner of conducting it, is absolutely necessary for the welfare and pecuniary prosperity of this State. Well, now, sitting here, as the learned gentleman from Orleans designated myself and others, as a juror, I really feel embarrassed in the verdict that I am to render, or, rather, in the vote that I shall be called upon to give. I believe fully in the necessity of keeping up our public works to all the needs and behests that shall be put upon them. And it has seemed to me that if they were properly manned and managed—if they were cleaned and deepened to the depth originally intended in the recent enlargement—they would be sufficient for all the work that will be thrown upon them for the next five to ten years. This may or may not be so. But it has also occurred to me in this discussion that we should relieve ourselves of considerable embarrassment and a very large amount of work, if we would take home to ourselves that very humiliating conviction that in the election that designated the members of this Convention the whole of the wisdom and integrity and honesty of the State was not exhausted—that there may be for some future body to meet in this assembly chamber some little of honesty and capacity yet left. Supposing that to be the case, it seems to me that we could with eminent propriety leave matters properly belonging to the Legislature to the action of such a body. If so, sir—and I should differ very much from my friend from Orleans [Mr. Church], eminent as he is as a jurist—that the paper that is proposed to be formed by this Convention is little different from a power of attorney—that we are here to form a fundamental law, a compact for the people of the State of New York, under which their laws are to be enacted, by which they are to be guided and governed, and under which they are to live. But, sir, are we not, in the section under discussion, aiming at too much—more than is necessary? Why, Mr. Chairman, this canal about which so much has been said, and which has been discussed so freely and fully, was built without any constitutional provision. There was nothing in the Constitution as it existed in 1817 that made it incumbent and necessary upon the Legislature to

provide for the construction of the Champlain or Erie canal. May it not, possibly, be competent for a future Legislature to provide for the management, control and enlargement of these canals? We have had a long discussion upon the management of the canals, a subject, in my estimation, clearly belonging to the Legislature. Now, if we could but arrive at such a conclusion it would save us a vast amount of labor; it would save us, perhaps, some humiliation. After we have gone through all this, and taken to ourselves the powers and duties of the Legislature, we may submit a document so voluminous that there may not be time for our constituency to read it, much less deliberate on its merits, between the period of our adjournment and the time when they must act upon it. Thus I fear our work will go for naught, and the labor of this Convention lost for want of time to examine the Constitution we shall present. In view of such a contingency, I have taken it upon myself to draw an amendment to be submitted at such a time as might be proper, and when it will be in order, in which most of the provisions purely legislative have been omitted, and also provision for paying the debt incurred in suppressing the rebellion, which constitutes one-half of our present obligations. Certainly, this matter should be left out of any discussion had with reference to our canals and their revenues. However sharply you may follow the canals as you would an absconding debtor, however closely you may hold them to a responsibility for every dollar expended, I think you can by no possibility thrust upon them responsibility for the bounty debt, so-called. The payment of this I would postpone, with the rich legacy of this government, to a future generation. I would postpone it because I would have, so to speak, some memento to tell of the mighty struggle to maintain this government. I would have those who come after us see and know in some small degree the vast amount of money, effort and human life that was needed to protect this government. When this amount is extended, as I propose to have it, the balance of our indebtedness will be easily provided for out of the revenues of the canal.

Mr. KETCHAM—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Ketcham, and it was declared lost.

The question was then put on the amendment of Mr. Verplanck, to strike out from the first section of the article reported by the Committee on Canals, the tenth, eleventh and twelfth lines, and to amend the fourteenth line as proposed, and it was declared carried, on a division, by a vote of 60 to 45.

Mr. E. BROOKS—I offer the following amendment, as I indicated last week. It is an amendment to the amendment offered by the chairman of the Canal Committee.

The SECRETARY proceeded to read the amendment, as follows:

"The canal stock debt contracted prior to June 1, 1846, amounting on the 1st day of July, 1867, to \$3,257,900; the general fund debt, amounting at the time last aforesaid, to \$5,642,622.22; the canal enlargement debt, amounting at the same

time to \$10,807,000; and the floating debt loan, contracted under the provisions of chapter 271 of the Laws of 1859, amounting at the same time, to wit, the first day of July, 1867, to \$1,700,000, shall hereafter be known as the 'canal debt,' for which the canal revenues are pledged, and the several sinking funds applicable to the payment of the said debts, amounting on the first day of May, 1867, to \$2,010,721.35, together with the contributions to be made thereto, and the income thereof shall be known as the 'canal debt sinking fund.'"

Mr. LAPHAM—I accept that amendment.

Mr. TILDEN—Is that a substitute for the whole clause?

Mr. E. BROOKS—Yes, sir.

Mr. LAPHAM—It is simply a substitute for the section I proposed, and adds the general fund debt.

Mr. VERPLANCK—Is that amendment printed and to be laid on our tables?

Mr. E. BROOKS—It is not printed.

Mr. TILDEN—I am not able to see whether that makes complete provision for the entire outstanding debt of the State. I would like to learn from the chairman of the Canal Committee what becomes of what is now known as the general fund debt and the sinking fund relating thereto.

Mr. ALVORD—The gentleman from New York [Mr. Tilden] will observe that this takes care of the debt prior to 1846, then comes the general fund debt of five million six hundred and some odd thousand dollars: next after that comes the debt that was created by the amendment to the Constitution of 1854; then next after that comes the loan debt of seventeen hundred thousand dollars, under the law of 1859, which was submitted to the people, and which makes a part of that canal debt.

Mr. TILDEN—Amounting to how much in the aggregate?

Mr. ALVORD—To something in the neighborhood, I think, of twenty-one millions of dollars. That makes the whole State debt, except the war debt.

Mr. KERNAN—I would ask the gentleman from Onondaga [Mr. Alvord] if the amendment does not cover precisely the debt provided for, in the second section of the Finance Committee's report?

Mr. ALVORD—I believe so.

Mr. RATHBUN—It is the same.

Mr. ALVORD—It is precisely the same.

Mr. KERNAN—I do not see, therefore, the importance of the amendment.

Mr. LAPHAM—The importance of the amendment is this: it declares the debts which shall hereafter be regarded as the canal debts of the State; it consolidates the sinking funds into one general fund for the payment of these debts, instead of having several sinking funds as they now exist. It is an important provision with reference to the future keeping of the accounts of the State, as between the canals and the funds in the treasury.

Mr. TILDEN—My difficulty in regard to this proposition, relates to the amount of the sinking fund. I do not know but that I might, upon an

examination of it, be satisfied with the appropriation it makes for this purpose, but on that point I am not able to determine without some examination. Although I am quite willing to make these general provisions in the Constitution, in conformity with the nature of the observations I had the honor of submitting the other day, there is one point upon which I am quite tenacious. Early in the consideration of this question, I was consulted by a very distinguished gentleman in respect to some modifications to be made in the sinking fund for the bounty debt. I then took this ground that in respect to any appropriation for the purpose of a sinking fund, I did not conceive it consistent with the honor of the State, or with good faith to take one step backward. I would never diminish an appropriation of that kind. It would not be regarded as consistent with sound morality or honorable practice in any private company, and certainly it would not be in regard to the great State of New York. Sir, having once made a sinking fund to pay a debt, the ownership of which is constantly changing, we have no right, under any circumstances whatever, to retract one dollar from that appropriation. I am not satisfied, as at present advised, that this preserves the existing sinking funds of the Constitution of 1846, and the amendments thereto.

Mr. E. BROOKS—I understand that this amendment does all the gentleman from New York [Mr. Tilden] desires, and substantially all that the chairman of the Committee on Finance desires. I understand that it makes a provision in detail, for the payment of the principal and interest of the entire debt, as in the existing Constitution. That certainly is the purport of the amendment. If it fails to express that very clearly, it fails to express what is my intention as the mover of this amendment. I think there can be no doubt about it; all that will be left over, under that provision, will be the eighteen millions discussed to-night, and the bounty debt. All the exactions under the Constitution of 1846, precisely as they are in that Constitution, are covered by the amendment.

Mr. TILDEN—I speak of the amount of the annual appropriation to the sinking fund. Is it the aggregate of all the various sinking funds, or is it less?

Mr. E. BROOKS—I think the provisions of the Constitution of 1846 are followed precisely. This is a very important amendment. It has been presented, of course, without any opportunity of being printed; there was no opportunity to make any such motion in Committee of the Whole. It may be undesirable to act upon it this evening, but it is a proper amendment to discuss during the balance of the session this evening, and then we can vote upon it after there shall be opportunity to print it; and when this committee rises to-night, I will move that it be printed.

Mr. CHURCH—I would like to have the gentleman from Richmond [Mr. E. Brooks] tell us what the object of this amendment is. The first section of the article presented by the Finance Committee undertakes to give the debts of the State; and in that statement is the eighteen millions of advance that have been stricken out. In

other respects, I do not understand that there is any dispute as to the accuracy of the statement.

Mr. TILDEN—Yes, sir, the statement of the debt is correct.

Mr. CHURCH—That states the debt up to July 1st, which is quarter-day, and which agrees with the subsequent provisions of the financial article. If it is the intention of the Convention to adopt the provisions of the Canal Committee's article, then it is right to substitute this; but if it is the intention of the Convention to adopt the subsequent section in relation to the payment of the debt, as reported by the Finance Committee, this amendment should not prevail, because it is incongruous and not in harmony with the subsequent provisions, and therefore of no sort of consequence.

Mr. E. BROOKS—It may be that the amendment should not prevail; I am not at all pertacious upon that point. The motive in offering that amendment is twofold: First, to consolidate all the State debts so that the people can see at a glance what they have rarely had an opportunity to see heretofore, precisely, and in as condensed a form as possible, what these State debts are. The next motive is to have what may be called the canal sinking fund debt, and to have, in one statement, the canal debt expressed on the face of the Constitution in as brief terms as possible; and in another provision to state what the sinking fund debt is, and what funds shall be appropriated to that purpose. I think one of the most complex features of our Constitution, and one which has kept the people in the dark more than anything else in reference to what are the requirements in this regard, is the various canal funds, and canal debts, and sinking funds, numbering I believe, in the Comptroller's department, almost as many as there are letters in the alphabet, with subdivisions as many as there are numerical figures, so that no man in the world, unless he devotes his time to it, as the chairman of the Committee of Finance has, or as my friend from New York [Mr. Tilden] has, can understand what these debts are. My main motive, as I indicated the other day, was so to express in the Constitution what these debts are, that the people shall be able to see them at a glance.

Mr. CHURCH—The gentleman from Richmond [Mr. E. Brooks] does not reach the point. The statement of the debts is accurately made in the first section of the Finance Committee's report; there is no dispute about it. In the third section the sinking fund for the payment of all these debts is consolidated precisely as the gentleman wishes and desires it should be. Now, why should this change be made of reckoning interest to a different day—not the regular quarter-day—and specifying the amount of the sinking fund which may or may not be correct?

Mr. E. BROOKS—I understand the figures are copied from the returns in the Comptroller's office.

Mr. CHURCH—You have put in the general fund debt which was not in the original report of the Finance Committee; but have said nothing about the sinking fund belonging to that debt.

Mr. E. BROOKS—I understood the sinking

fund amounted on the 1st day of May last to something less than two millions of dollars.

Mr. CHURCH—That sinking fund was for the debt that existed in 1846, and the debt under the amendment of 1854. You have put the general fund debt into it now, and where is your sinking fund for it?

Mr. TILDEN—You have left out one sinking fund.

Mr. CHURCH—Now what is the object of thus confusing the debts of the State? You have taken out the eighteen millions of advances.

Mr. E. BROOKS—The committee did that.

Mr. CHURCH—I say the committee did that. Now, the balances are correctly stated are they not?

Mr. E. BROOKS—Yes sir, substantially.

Mr. CHURCH—Then if correctly stated why change it? They are all stated with interest up to the 1st of July, which is quarter-day, as they should be; and the third section corresponds to it, and consolidates the sinking funds for all those debts except the bounty debt which is not a canal debt. Now, why change it?

Mr. LAPHAM—The object of my amendment as I have once or twice stated, is this: the article of the Finance Committee which it is proposed to strike out is a mere recital of certain amounts. It enacts nothing; it declares nothing; it provides nothing. It simply says the outstanding debts of the State and their liabilities, for the payment of which the canal revenues are pledged, are so and so, enumerating them—determining nothing. In lieu of that it is proposed to insert a proper constitutional provision which declares that the canal debt in 1846, what was termed the general fund debt in the Constitution of 1846, the floating debt, the loan debt of one million and seven hundred thousand dollars, and the enlargement debt, which has been contracted since 1846, shall together, in future, be known and designated as the canal debt of the State; and that all the funds now in the treasury belonging to the several sinking funds applicable to the payment of those debts, shall be known as the canal debt sinking fund, put into one fund so that but one account will hereafter be kept between the State and the canals. Now, every one who has looked at the statistics will see that for the last twenty years there has been a distinct account kept with each of these debts, and a sinking fund kept separate for each of these debts. It has been necessary to keep running accounts with these several funds. This is the cause of much complication and inconvenience. Occasionally, as necessity has arisen, these funds have been loaned from one to the other, and paid back from the one to the other. What we propose is to put the entire fund of the State into one sinking fund applicable to the payment of all these debts as provided for by the Constitution.

Mr. MURPHY—I presume the object of this amendment of the gentleman from Richmond [Mr. E. Brooks], is to pave the way for the adoption of the amendment proposed by the gentleman from Ontario [Mr. Lapham], which is to substitute the seventh section of his report for that of the Finance Committee. In that view it would, without doubt, be very proper to adopt his amend-

ment, because direct reference is made in the amendment as proposed by the gentleman from Ontario to the section which it is proposed now to introduce as an amendment by the gentleman from Richmond [Mr. E. Brooks]. If, therefore, the Convention are prepared to vote for the amendment of the gentleman from Ontario, as originally proposed, it would be only proper for them to vote for this amendment. Then, if it is accepted, the question comes back to this: whether we are prepared to adopt the amendment of the gentleman from Ontario. So far as regards the consolidation of the sinking funds I will say that is all provided for by the articles proposed by the Finance Committee. Their third section expressly provides that the "revenues shall be applied as a sinking fund to pay the interest and principal of the several debts specified in section 2 of this article." There is an application of the revenues and a consolidation of the sinking funds for the payment of the debts by the Finance Committee. I feel disposed to support that portion of the report of the Finance Committee—that is, sections 2 and 3. Being of that opinion I must consequently vote against the amendment as proposed by the gentleman from Ontario [Mr. Lapham] and amended by the gentleman from Richmond [Mr. E. Brooks].

Mr. CONGER—An amendment of this kind presented at so late a day, and at so late an hour in the day, should have on the face of it the evidence of entire correctness; there should be no doubt whatever that the debt stated is exactly correct in its amount. Now, sir, the gentleman from Richmond [Mr. E. Brooks] presents an amount which is, as near as I can make it out, one hundred and sixty dollars less than the amount as stated by the majority report of the Committee on Finance.

Mr. E. BROOKS—I copied it from the auditor's report.

Mr. CONGER—On what page?

Mr. E. BROOKS—From the Manual.

Mr. CONGER—There is a mistake about it, evidently.

Mr. E. BROOKS—There is one hundred and sixty dollars difference.

Mr. CONGER—I will not detain the committee except to point out the difference in the manner in which these things are stated. The majority report of the Finance Committee tells you that this debt amounted to \$3,258,060, on the 1st of July, 1867. The honorable gentleman from Richmond, who proposed this amendment, which has been accepted, makes the amount on the 1st of May, one hundred and sixty dollars short. The Canal Committee, in their report, make it amount on the first day of May to \$3,265,900. It seems to me to be very strange that we cannot get the amount of that debt fixed with accuracy. I cannot find authority in the reports, nor in the files on our tables to show what is the exact amount of the debt on the 1st of May, on the 1st of June, or the 1st of July. I think the gentleman who proposed the amendment was bound to show the authority for the entire correctness of his figures.

Mr. EVARTS—Will the chairman of the Canal Committee inform the Convention for what

purpose and with what advantage there is a discrimination made in the dates to which interest is calculated in the respective reports of the Canal and Finance Committees?

Mr. LAPHAM—It arises from no other cause, so far as I am aware, than this: that the Canal Committee, in estimating the amounts of these several debts, selected the 1st day of May from the reports which they had in their possession. It is a matter of no sort of consequence what amount is stated in this section for these respective debts. If they are erroneously stated it does not affect the Constitutional provision. The debts are named and the mere recital of the amount is, of course, immaterial.

Mr. COMSTOCK—As I understand the amendment which has been proposed and accepted by the chairman of the Canal Committee, it accomplishes what is contained in the first and second sections of the Finance Committee's report. It is a mere question of style, grammar and arrangement. I do not see the utility of the amendment, and shall, therefore, vote against it.

Mr. TILDEN—With a view to enable the committee to know what is the truth about this amendment (I refer now not so much to the enumeration of the debts as to the provision for the sinking fund, of which I have a strong impression that it is widely erroneous) with a view of enabling the committee to inform themselves on this subject, I will move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Tilden, and it was declared lost.

Mr. LAPHAM—I ask permission to state for the information of the gentleman from Onondaga [Mr. Comstock], that the first and second sections of the article proposed by the Committee on Finance make no provision, nor does the article in any portion of it, make any provision for the consolidation of the sinking fund. That is the most important object the Canal Committee had in view in combining these debts in one debt, as the canal debt; and consolidating the sinking funds into one fund, to be known as the canal debt sinking fund debt.

Mr. CHURCH—The gentleman from Ontario [Mr. Lapham] is entirely mistaken. In the first place, as to the first section of this article, if we are to state the debts let us state them accurately. I hold in my hand a statement made to me by the auditor of the canal department, for the purpose of being inserted in the first section of this article, and which he made, as he assured me, with entire accuracy; it contains the amount of these several debts on the first day of July. If this statement in the handwriting of the accountant of that department is correct then the report of the Canal Committee, so far as it relates to the amount of these debts is erroneous. If we undertake to state an account of the debt it seems to me we should state it correctly. Now, sir, again, the gentleman from Ontario says that the report of the Finance Committee does not consolidate the sinking fund for the payment of these canal debts. Well, the second section provides that the several debts designated as the canal debt, the general fund debt and the canal debt under the

amendment of 1854 shall be paid "as provided in the next section." The next section provides a sinking fund into which the revenues of the canals are to be paid annually; it requires that these revenues shall be consolidated into one fund, and that from the consolidated sinking fund those debts shall be paid.

Mr. FOLGER—Will the gentleman be pleased to read the ninth and tenth sections? Do they not refer to a further sinking fund?

Mr. CHURCH—No, sir; they only refer to the accumulation of "the sinking funds now provided—that this consolidated sinking fund shall be applied to the payment of these debts, together with all accumulations of the present sinking funds. It is the same as the Canal Committee's report precisely in that respect.

Mr. FOLGER—I understand the chairman of the Canal Committee to say that it conglomerates all into one.

Mr. CHURCH—Precisely; and so does this. Now, let me explain to the gentleman from Ontario [Mr. Folger], because I want no misunderstanding. The gentleman and the committee will understand there are separate sinking funds for each one of the debts now provided in the Constitution, and there are moneys accumulated in those sinking funds. We propose to make one sinking fund for the payment of those debts.

Mr. FOLGER—Where do you do that?

Mr. CHURCH—In that section. "After all expenses," etc., "there shall be appropriated and set apart," etc., "the whole of the remaining revenues of the State canals as a sinking fund"—that is one fund—"to pay the interest as it falls due, and redeem the principal of the several debts specified in section 2 of this article," which are these precise debts, "until the several debts shall be fully paid and provided for; and the principal and income of said sinking fund, together with the principal and income of the sinking funds now provided for the payment of said debts, which shall have accumulated on the 1st day of October next." Whatever there is in the sinking funds shall go into this one fund; that is all there is of it; nothing can be plainer, or more definite, than that.

Mr. LAPHAM—In that view the Finance Committee employ three sections to express this purpose, whereas my amendment employs but one, and that shorter than either of the three sections of the Finance Committee's article. For that reason alone I prefer the adoption of this substitute. But it is only inoffensively in their report that the funds are consolidated. My construction of the third section is that it leaves the sinking funds as they now exist—

Mr. CHURCH—Not at all.

Mr. LAPHAM—And provides for the continuing of them as they now exist. But whether that be so or not, the substitute I propose puts in the form of a single section this expression of the intention of the committee, and does away with the useless recital contained in the first section, put there for no purpose, expressing no purpose, declaring nothing, providing nothing—simply reciting the funds without saying anything whatever in respect to them.

Mr. KERNAN—Mr. Chairman—

Mr. E. BROOKS—Will the gentleman from Oneida [Mr. Kernan] give way a moment, that I may ask the chairman of the Canal Committee a question? .

Mr. KERNAN—Yes, sir.

Mr. E. BROOKS—I would ask the chairman of the Canal Committee (though the difference of one hundred and sixty dollars seems to be immaterial), if he will consent to make the amount \$3,258,060, to conform with the Finance Committee's report? It does not change the principle at all.

Mr. ALVORD—To the first of July.

Mr. LAPHAM—I have no objection.

Mr. CHURCH—That does not help the matter.

Mr. KERNAN—I desire to state briefly why it seems to me we will not make progress or improvement by adopting this amendment. As the first section now stands in the article reported by the Finance Committee, it states the amount—being over twenty-one millions of dollars—which is to be paid out of the canal revenues. This is the same debt which is enumerated in the amendment proposed by the gentleman from Richmond [Mr. E. Brooks]. The second section then provides for paying the twenty-one millions "as provided in the next section." I take it the majority of this committee are in favor of that. The eighteen millions have been stricken out of the first section. Then, to carry out the view of the Convention, we have only to strike out in the fourth and fifth lines of the third section the words "the whole of the remaining revenues of the State canals," and insert in lieu thereof the words "the sum of two million four hundred and eighteen thousand dollars annually." That section then consolidates all the sinking funds for the payment of the debt. If the sense of the majority of the Convention is as I assume it to be, from what I have heard, that they are opposed to the Canal Committee's report, opposed to the scheme of contracting a further debt for an immediate enlargement of the canals, as proposed by the Committee on Canals, then we should, it seems to me, vote down the amendment, approve of the first section as amended, adopt the second section of the report of the Finance Committee as it stands, and change the third section in the manner I have stated. Then we will have the article precisely as I understand it is desired it should be by a majority of the Convention. I hope we will do this for the reason that, if we interpolate from the report of the Canal Committee, the same debt mentioned in the second section of the Finance Committee's report, under a different name, we will be in confusion unless we proceed and adopt the rest of the Canal Committee's report. Whereas, if we adhere to the Finance Committee's report, which is carefully drawn with reference to keeping this twenty-one million debt separate from the other, we have only to strike out what is in it with reference to the eighteen millions, and we shall have a well drawn and harmonious article. I believe this will save us time and really reach the same result.

Mr. MURPHY—We are in danger of getting into some confusion. It must be borne in mind that the question is now no longer upon the prop-

cession, as brought forward by the gentlemen from Richmond [Mr. E. Brooks], and accepted by the gentlemen from Ontario [Mr. Lapham]. The question is no longer on that—or, if it is, only as a part of the main proposition before the Convention. The proposition on which we are now called upon to vote, is whether we will put in the original amendment of the gentleman from Ontario from the sixth section of the Canal Committee's report in lieu of the report of the Committee on Finance. That is the question to be voted upon. If we are prepared to do that, then it appears to me, as a matter of course, we may take this amendment which the gentleman from Ontario has accepted, and which, of course, is [the main proposition. Those who are in favor of that provision of the Canal Committee's for an immediate enlargement of the locks on the canal at an expense, as they say, of eight millions of dollars or more will vote, "aye," upon the question now before them; those who are opposed to it will vote, "no."]

Mr. ALVORD—I do not understand it at all, in the light of the gentleman from Kings [Mr. Murphy], the proposition of the gentleman from Ontario [Mr. Lapham] as amended by the gentleman from Richmond [Mr. E. Brooks] is a substitute; therefore in that view, the proposition of the gentleman from Ontario contained in the sixth section is entirely used up in the proposition of the gentleman from Richmond. I understand, with other gentlemen who have spoken, that so far as it regards the idea upon the part of the Canal Committee in reference to the creation of an eight million loan debt for the purpose of an immediate completion of the enlargement of the canal, that it will not be taxable on the State. I say to gentleman they do not intend to reach their object in the way, and in the direction they have reported. They have certain other propositions to submit in this matter which, I believe, will receive the attention, and also the approbation of this committee.

Mr. MURPHY—I would like to ask the gentleman whether the original amendment, or proposition of the gentleman from Ontario [Mr. Lapham] is withdrawn from the consideration of the committee?

Mr. ALVORD—The sixth section entirely, by this amendment of the gentleman from Richmond [Mr. E. Brooks].

Mr. MURPHY—I should like to hear from the Chair or the Clerk what is the pending amendment before the committee.

The CHAIRMAN—The pending amendment is that offered by the gentleman from Richmond [Mr. E. Brooks], and accepted by the gentleman from Ontario [Mr. Lapham] in lieu of the amendment offered originally by him which was to substitute the sixth section of the canal article for the first section of this financial article.

Mr. MURPHY—Then I stand corrected.

Mr. EVARTS—For what is this section moved as a substitute, is it for the first, second and third sections, or only for the first?

Mr. LAPHAM—Only for the first.

Mr. FOLGER—I wish to call the attention of the chairman of the Canal Committee to a difference in phraseology. I do not know myself

whether it is vital or not, but until it is explained I shall consider it so, and govern my vote accordingly. The first section of the report of the Committee on Finance reads as follows: "The outstanding debts of the State and other liabilities, for the payment of which the canal revenues are pledged by the terms of the Constitution of 1846," etc. The amendment proposed by the gentleman from Richmond [Mr. E. Brooks], and accepted by the gentleman from Ontario [Mr. Lapham], contains no pledge of the canal revenues for the payment of those debts; no recognition that they are pledged, and I shall govern my vote in that consideration unless it is explained to me, that it is not necessary; that there is some pledge elsewhere in the report.

Mr. OPDYKE—I am opposed to this amendment for the reasons that have been stated by the gentleman from Oneida [Mr. Kernan]. The original section reported by the Committee on Finance is a correct recital of the entire indebtedness of the State, as it now stands with the \$18,000,000 stricken out. I think it is important that the State should know its aggregate indebtedness and the purpose for which its indebtedness was created. In addition to that, it is a proper preamble to the second section which follows, and a necessary one. In the next place, if I have correctly understood the gentleman from Richmond [Mr. E. Brooks], and the chairman of the Canal Committee, the amendment proposed, leaves out of the sinking funds a certain fund called the general fund debt, and, consequently, is inaccurate. That is another reason why it should be voted down. The third reason is that if the majority of the committee prefer the plan of the finance report, this preliminary section which is in the character of a preamble, as well as a recital, is unnecessary to that article.

Mr. MURPHY—I believe amendments are now in order.

The CHAIRMAN—Amendments are in order.

Mr. MURPHY—I move to add after the words "canal debt," in the amendment, the words "for which the canal revenues are pledged."

Mr. LAPHAM—I am willing to accept that, although the provisions for the pledge and the nature of the pledge is provided in the succeeding sections.

Mr. CHURCH—I take it for granted that the committee desire to make these arrangements so that they will be uniform and so that they will be understood, and will be clear and certain. Now this amendment is wrong for two or three reasons. In the first place it purports to enumerate the debts of the State and omits entirely the bounty debt. The object of the first section of the report of the Finance Committee is to recite the debts of the State. First it states those debts for which the canal revenues are pledged; then it states those for which the revenues are not pledged. Now, if we are reciting the State debts why not name them all?

Mr. E. BROOKS—The amendment undertakes simply to state what the canal debt is.

Mr. CHURCH—That is the very objection I make to it. The object of the first section is to recite the debts of the State for the information of the people of the State; to show the amount of in-

debtedness against the State, and classifying the obligations for which the revenues are pledged and those for which the revenues are not pledged. Another objection is, that the amount of the sinking fund, stated here to be \$2,010,734.35, on the 1st of June, if changed to the 1st of May or of July, may be entirely incorrect.

Mr. E. BROOKS—It is only changed in regard to the last provision of the sinking fund.

Mr. CHURCH—I understood it was changed with regard to all.

Mr. E. BROOKS—No, sir; only with regard to the sinking fund.

Mr. CHURCH—The gentleman from Ontario [Mr. Lapham] has changed his ground for asking this substitution. Now he says it should be adopted because it will be a substitute for the first three sections of the report of the Finance Committee. That is not so. All there is in this substitute in relation to the sinking fund is this—

Mr. LAPHAM—I have not stated that it was a substitution of that section for the three sections of the report. The second section of the financial article, if the Convention or the committee chose to adopt it, follows this amendment, naturally and properly. The adoption of this amendment simply enacts what shall hereafter be known as the canal debt, and consolidates the sinking funds, into which payments are to be made. The future provision which we are to make with reference to the surplus revenues of that fund is still pending, and to be determined.

Mr. CHURCH—Precisely. But the gentleman did say that this substitute should be adopted because it took the place of three sections of the report of the Finance Committee.

Mr. LAPHAM—I will correct it then. I said if it was necessary to resort to the first three sections of the report of the Finance Committee to determine whether the sinking fund is consolidated, I preferred my amendment, because it embraces the object of the first three sections of the Finance Committee's report in one section.

Mr. CHURCH—What does the first section of the Canal Committee's report do? It takes the present sinking funds and gives them a name. That is all? It does not provide a sinking fund at all. It does not require any money to be paid into a sinking fund, nor specify what shall be paid in and what shall be paid out. It takes all the three sinking funds now provided and names them the canal debt sinking fund. The third section of the Finance Committee's report provides for a consolidated sinking fund, and provides the money from the revenues to pay those identical debts.

Mr. ALVORD—If the gentleman will turn to the Canal Committee's report he will find in the seventh section the canal revenues absolutely pledged.

Mr. CHURCH—I understand the seventh section of the Canal Committee's report provides for the matter of enlargement only.

Mr. ALVORD—I understand it does, but it is proposed to amend it and make it general in that regard.

Mr. CHURCH—If the committee propose to take up the seventh section of the Canal Committee's report and make their financial arrangements

from that, then they will vote for this amendment. If they propose, however, to consolidate the sinking fund, as is provided in the report of the Finance Committee, this amendment should not be adopted, because it is not only useless but mischievous. It provides no sinking fund; it names these sinking funds as one canal debt sinking fund, but it makes no sinking fund and provides no way for the application of the moneys. I tell this committee if they adopt this amendment, not only will confusion arise, but in my judgment we will not escape serious financial disaster. I want the debts of the State to be accurately given, and does not the first section of the Finance Committee's report state them exactly and accurately? Does not it state that for certain debts the revenues of the canals are pledged, and that for certain other debts they are not liable? Does it not in the second and third sections provide for a consolidated sinking fund to pay the debts and clearly and plainly provide that they shall be paid? There is no such provision in the other report. All that I desire here is that this committee shall go on with their eyes open in reference to this provision. If they adopt this amendment they will get into confusion.

Mr. ALVORD—The difference between the report of the Finance Committee and the amendment of the gentleman from Ontario [Mr. Lapham] is simply this: that the proposition of the Finance Committee is simply a recital of the canal debts as now before the committee, and the amendment of the gentleman from Ontario consolidates the canal debts. It does a positive act; it consolidates the canal debts and consolidates the revenues in the sinking fund to pay those canal debts.

Mr. CONGER—Will the gentleman please explain what he means by consolidating the revenues in the sinking fund?

Mr. ALVORD—There are three sinking funds, and they are brought together as the canal debt sinking fund. The Finance Committee's article does not mention the sinking fund until it gets to the second section. The same object and meaning is expressed in one section by the amendment of the gentleman from Ontario as is expressed in the three sections of the Canal Committee's report. In one it is a mere recital, and in the other it is a substantial thing. It makes these canal debts which have been mentioned over and over again—I need not name them—one canal debt; it makes the three sinking funds applicable to the payment of those debts and makes them one canal debt sinking fund, and pledges the revenue in payment. The section proposed by the gentleman from Richmond and accepted by the gentleman from Ontario pledges the canal revenues only. Gentlemen may see by turning to the next section of the Canal Committee's report that it pledges the canal revenues.

Mr. KERNAN—The seventh section of the Canal Committee's report pledges the canal revenues in a very different way, after laying out a great deal of money in enlarging the canal, after enlarging the locks and taking out the bench walls and enlarging the prism and supplying the canal with water.

Mr. ALVORD—I will ask the gentleman

whether he cannot in the seventh line stop short at that word "debts."

Mr. KERNAN—I think not. We had better take in the whole. We can easily do it in this section.

Mr. ALVORD—The difficulty between the two is, this is a mere recital and the other is a positive declaration on the part of the Convention. So far as this section is concerned there is no necessity for this recital, and so far as regards the mere recital of the debts, the canal debt we have mentioned in terms, not with regard to the amount, but for the purpose of bringing about a consolidation. That is all that is necessary. I may state another thing. The position taken by the Committee on Finance here is to recite that the debts are on such a day such an amount.

Mr. RUMSEY—I desire to ask a question—whether the amendment pledging the canal revenues to the payment of these debts was accepted.

The CHAIRMAN—It was accepted.

Mr. RUMSEY—Then there is in this section an absolute pledge of the canal revenues.

Mr. ALVORD—Then there is another thing—this recital fixes the amount of the debts when it may be entirely different, and when you have in the Constitution fixed the amount how are you going to get rid of that fact?

Mr. KERNAN—The amendment does the same thing.

Mr. ALVORD—The amendment does not. The amendment says that certain debts, amounting at such a time to so much, shall be consolidated; but it does not say those are the debts of the State, it does not at all put any such limit to it.

Mr. EVARTS—I shall vote for this amendment upon one single consideration which it seems to me should be sufficient for every member of this Convention. It is not that it comes from the Canal Committee's report, or that it is to be followed by any subsequent adoption of their report, but simply for the reason, that the first article as it stands now, in the report of the Committee on Finance is a mere recital of what the Constitution of 1846 and the amendment of 1854 has done, whereas the amendment offered by the gentleman from Richmond [Mr. E. Brooks] is in the proper form for a constitutional enactment of what we are to do.

Mr. PAIGE—It is expected, generally that in the formation of a constitutional article we should employ the greatest perfection in language and in the arrangement of subjects and paragraphs. In this proposed amendment in the creation of a sinking fund, the draftsman has made an accessory fund and a principal fund. It declares that these sinking funds shall be known and designated as the canal debt sinking fund, and the revenues of the canals shall be paid into that sinking fund. As the canal revenues are the principal funds which constitute the sinking fund, the whole should be known as the canal debt sinking fund.

The question was put on the amendment of Mr. Lapham and it was declared carried, on a division, by a vote of 60 to 45.

Mr. CONGER—I move to strike out the word "stock," it reads here "canal stock debt;" there is no such thing—it is known as the canal debt prior

to 1846. In the first section of the seventh article it is spoken of as the State debt called the canal debt as it existed at the time aforesaid.

Mr. ALVORD—I don't know as there is any objection to that; the reason why it is used, as the gentleman will find, in the reports made to this Convention, it is called the canal stock debt.

The question was put on the amendment of Mr. Conger and it was declared carried, on a division, by a vote of 58 to 33.

Mr. MERRILL—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Merrill and it was declared carried, on a division, by a vote of 66 to 37.

Whereupon the committee rose and the PRESIDENT resumed the chair in Convention.

Mr. SHERMAN, from the Committee of the Whole, reported that the committee had had under consideration the reports of the Committees on Finances and on Canals, had made some progress therein, but not having gone through therewith, had instructed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave to sit again and was declared carried.

On motion of Mr. BARNARD the Convention adjourned.

FRIDAY, September 13, 1867.

The Convention met at nine o'clock A. M.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. CORBETT presented the remonstrance of citizens of Syracuse against the abolition of the Board of Regents of the University.

Which was referred to the Committee of the Whole.

Mr. GOODRICH presented the remonstrance of the trustees and officers of Groton Academy and others, on the same subject.

Which took the same reference.

Mr. MERWIN offered the following resolution:

Resolved, That after this week, during sessions of the afternoon, a recess be taken from two o'clock to four o'clock, and from six o'clock to seven o'clock.

The resolution giving rise to debate it was laid on the table.

Mr. ARCHER—I ask leave of absence for Mr. Larremore on account of business connected with the board of education.

There being no objection, leave was granted.

Mr. CLINTON—I ask leave of absence for my colleague, Mr. Potter, for next week, and until Tuesday morning of the week after.

There being no objection, leave was granted.

Mr. AXTELL—I desire to call up for consideration the resolution offered by me on the 23d of August.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the Committee on Revision be and is hereby instructed to strike out the first section of the article reported by the Committee on Counties, Towns, etc., as amended in Committee of the Whole, and adopted by the Convention.

Mr. AXTELL—Mr. President, I have offered this resolution because I regard the subject as one of vital importance to the future prosperity of the State, and because I fear that if this section is incorporated in the Constitution, such opposition will be excited as to cause the rejection of the Constitution by the people. The argument of the gentleman from Ulster [Mr. Hardenburgh], appeared to be regarded as conclusive by the majority of this body; but, with due respect to that gentleman, and, I trust, with becoming diffidence in regard to my own knowledge of legal principles, I must be allowed to question the soundness of the principles upon which the argument was built, or which he sought to establish by the argument. Before proceeding to examine the argument, I will refer to a word upon which changes were rung by the gentleman, and which, perhaps, was somewhat alarming to some gentlemen. It is said that the celebrated Whitefield, by his peculiar manner of enunciating the word *Mesopotamia*, was wont to melt an audience to tears; so a certain class of gentlemen are in the habit of using certain words, for the purpose of alarming people—certain old Latin terms and phrases, and occasionally these words and phrases do blanch some lips and cheeks with fear, but after all there is nothing so very alarming in these words and phrases. The words *agrarianism* and *agrarian* are in this category; they are used glibly and carelessly, but perhaps sometimes effectually, to cover up the lack of sound arguments; and serve the same purpose that quaker guns do, when pointed at timid commanders and troops. The gentleman from Ulster [Mr. Hardenburgh] argued at some length, that the bonding of towns for the purpose of building railroads is an invasion of the rights of private property—that it is in fact taking the private property of one set of persons for the use of another set of persons—and that this is an example of the tyranny of majorities—that it is unjust and oppressive, and at war with the spirit of our institutions. The whole of his argument proceeds on the assumption that railroads are purely private corporations; that they are for private purposes; and thence he concludes, that when a majority in any given locality levies a tax to aid in the construction of a railroad, it is a violation of the rights of the minority of the property holders—that it is taking their property for private uses. This is the body and soul, the *alpha* and *omega*, the beginning and the ending of his argument. But this reasoning is fallacious throughout. It is established by numerous judicial decisions and by the public policy of all civilized nations, that though railroads are private corporations, they are for public use and benefit, and that too in sense differing from that in which most other corporations are for public use and benefit. In an eminent sense—I may say in a supereminent sense, they are for public use and benefit. They involve public duties, and are created for the public accommodation. "Though a railroad company be a private corporation, and its outlays and emoluments private property, yet the road is a public highway and for public uses." Railroads are in fact a necessity of the public; they are a part of the civilization of the age, and one of the great civilizing

forces of the age. They are so connected with the social, material and political progress of the nations as to render them an absolute necessity. This necessity is recognized in the fact that the right of eminent domain has been invoked to render the building of them possible. Under the operation of this right, roads are chartered and run through the lands of private citizens, without their consent, and utterly regardless of their wishes. By the operation of this right of eminent domain, the farmer who says, in the language of the gentleman from Ulster [Mr. Hardenburgh], "I do not want my land disturbed, or my night sleeps disturbed by the noise of the locomotive," is compelled to submit to have his quiet slumbers thus disturbed. He has no power, according to the settled policy of civilized nations and the judicial decisions, to prevent it. He must submit to it. Notwithstanding the gentleman says "I say he has a right to say so," that is that he does not want his sleep disturbed. He further says, "and the only way you can build a railroad over his property is in a constitutional way." But, according to the reasoning of the gentleman, there is no constitutional way of building a railroad over any man's property without his consent. But his theories go for nothing in view of the fact that railroads are built. The gentleman theorizes, and his farmer yawns and mutters curses in his disturbed slumbers, but the locomotive screams and thunders along over private property, taken by a private corporation for public use, regardless of both the theories and the yawns, and it screams and thunders, too, according to the principles of justice and law announced and enforced by judicial decisions. The taking of private property for railroads is not taking it for public purposes, I ask the gentleman how is it that all laws authorizing such taking are declared to be constitutional by the courts, as they have been whenever the question has arisen? Is it not because they are public property or for public use in the meaning of the Constitution? In 3d Paige's Chancery Reports the chancellor decided that railroads are public improvements, from which the public derive a benefit, and the Legislature can appropriate the property of an individual for the purpose of such improvements. In 14 Wendell, page 57, the court determined that railroads, though made by private corporations, when designed for traveling and transportation, are great public improvements. They can be made profitable to the proprietors only by affording the most liberal accommodations to the public. They are, from their very nature, devoted to the public use. Now, the constitutional provision authorizing private property to be taken for public use, implies that for any other use it shall not be taken. Hence, inasmuch as from the very nature of railroads, private property must be taken in their construction, and without the consent of the owners, the conclusion is unavoidable, that the taking of such property for such purposes is taking it for public use and benefit, though it is done through a private corporation. But it will be replied that private property can only be taken by giving a just compensation; but the fact of compensation makes no difference whatever, if railroad corporations are merely pri-

vate and for private benefit, as the gentleman from Ulster [Mr. Hardenburgh] asserts and reiterates. The private property of one man cannot be taken for the use of another against his consent even if compensation be made. You cannot by your laws take any portion of my land for the use of a bank or a church against my consent, even though you propose to cover the land with gold as a compensation; but you may run your railroad through my farm despite all my efforts to the contrary. I may deem the road a nuisance, it may interfere with all my plans of improvement and with cherished and hallowed associations; but my protests are vain. The road is built. But why are my wishes and feelings thus trampled down? It is because the road is a necessity; it is for public use, benefit and accommodation, and the right of eminent domain is invoked, and it overrides and tramples down my mere private rights. This right is not, and cannot be, invoked in relation to corporations not similar to these corporations. Who ever thought of making the right of eminent domain to operate in relation to a bank, or a joint-stock manufacturing company, or a church? If I understood the gentleman [Mr. Hardenburgh] correctly, he intimates that the relations of a church corporation and a railroad corporation to the public are precisely the same. He says that under the same power by which you bond towns to aid in building railroads, "you can build a church." He says further:

"But here is a town in my county a majority of whose inhabitants are Catholics; they want to build a great cathedral; they do not want to pay for it themselves; they desire the Protestant portion of the population to pay a portion of the expense. I would like to know if they cannot for that purpose, on the principle of the amendment, bond a town? I rather think a church is as much in the nature of a public improvement as a railroad."

Now, I would like to ask the gentleman if he does not know that church corporations are in their relations to the public entirely dissimilar to railroad corporations? Does he not know that a church is not a public improvement in any such sense as a railroad is a public improvement. If a church is a public improvement and for public use, and benefit in the same sense in which a railroad is for public use, you may by law take my land for the purposes of a church against my consent. I may be opposed to the church. It may be a Catholic or a Methodist, a Hardshell Baptist, or a church of the New Dispensation, under the pastorate of Nasby, but no matter, if the reasoning of the gentleman from Ulster [Mr. Hardenburgh] proves that I may be compelled to have built upon my land, this church to whose religious creed, and ecclesiastical organization I am opposed. To such an absurdity does he commit himself, for the want of sound arguments to sustain the position he has assumed. Churches are not public improvements in any such sense as gives the State the right to take private property with or without compensation for building them, but railroads do, by the aid of the State, take private property, and the power of

the Legislature to authorize the taking of private property by railroad corporations is sustained by all judicial decisions on the subject. Does the gentleman propose to question these decisions? Now, Mr. President, the taxing of the people of the towns and counties to build railroads for their own use and benefit is not taking private property at all, either for public or private use. It is very strange that gentlemen learned in the law should use language so loosely, should so darken counsel by the misapplication of terms. Are the taxes which are levied for the ordinary purposes of government the taking of property in any legal sense; or within the purview of that constitutional inhibition which forbids the taking of private property without compensation? By no means. The taking of money from the people in the form of taxes is not, in any proper sense, taking private property. The inhibition of the Constitution has no relation to the taxing power. Men pay their taxes for the ordinary expenses of government and for local public improvements, for grading and paving the streets, for opening highways and keeping them in repair, without for a moment supposing that the power which compels, or requires them to pay these taxes is a power which grasps at private property in any real meaning of the term. They are taxed to pay for many improvements, even though they may be opposed to the improvements. But they share in the common benefits of these public improvements, and this is the compensation for the taxation to which they are required to submit. Now, sir, the taxes which are paid in certain localities for the purpose of aiding in constructing railroads are paid upon substantially the same principle as are the taxes for ordinary public highways. If the expenses of opening an ordinary highway may be fairly and justly assessed upon the property directly benefited by it, it can be no injustice, no violation of any private right, to require the property whose value is vastly increased by the opening of such a great public highway as a railroad to pay a portion of the cost of opening that road. Take, as an illustration the railroad running from Ogdensburgh to Rouse's Point. The value of the property in the counties through which it passes has been increased, perhaps, fourfold by that road. It was built by capitalists who lost their money, while the property holders along the line are reaping the advantages of their outlay of capital. Now, that road was a great public necessity, and the property of that portion of the State should have been taxed to build it. But, say the gentlemen who favor the constitutional inhibition which we are opposing, "Let those who want railroads build them. When the roads are needed, the capital will always be found to build them." But, with the light of experience shining upon them, no man in his senses expects capitalists to invest their money in the construction of railroads where private capital alone is to be employed in their construction. There must be a combination of private capital with the property interests of the localities, in order to effect the great public improvement. The whole property of the locality must bear its fair proportion of the cost, receiving its compensation in the increased value of

property, and the great public convenience. But why do gentlemen insist on incorporating into the organic law a new provision, which will operate as an effectual barrier against the making of great public improvements which are imperatively demanded in certain portions of this State. Why thus seek to restrict and cripple the action of the people in their efforts for the advancement of their local interests? There is no fundamental principle which demands the incorporation of such a provision into the Constitution. There is no rule of expediency which demands it. The instances in which the power of bonding towns for this purpose has been exercised are not so numerous, nor has the exercise of the power been so disastrous, as to demand any interference in the manner proposed by the section which I desire to have stricken out. What is the total indebtedness of the towns in the State at this time on this account? It but little exceeds seven millions of dollars, and it is not at all likely to be increased by more than two or three millions more in the next ten years. The whole subject, then, should be left to the Legislature and to the people, who have a direct interest in these questions as they may arise in the different parts of the State. There is no necessity for this restriction to protect the people against the schemes of interested persons. Men may get up railroad schemes to further their own private interests, and they may use much sophistry in advocating their pet schemes, but unless the private interests of these men, and the public interests happen to be identical, their schemes will not be adopted by the tax payers. The people should always be exceedingly cautious in committing themselves to any plan for bonding towns for such purposes, but they should not be prohibited from doing it, when, after a full consideration of the subject, they deliberately resolve upon it. If you place this provision in your organic law, though every tax payer were in favor of it, no town could become interested in a railroad corporation. Why undertake to place in the Constitution such an inhibition, and thus array against our work here the opposition of the localities to be affected by it?

Mr. BICKFORD—The matter embraced in the resolution of the gentleman from Clinton [Mr. Axtell], is of very great importance, upon which I wish to address the Convention. I do not wish to do so this morning. I therefore move that the resolution do lie on the table for the day.

The question was put on the motion of Mr. Bickford and on a division, there was a vote of 43 to 18.

Mr. GREELEY called for the ayes and noes.

Not a sufficient number seconding the call, the ayes and noes were not ordered.

Mr. ALVORD—This being a motion to lay on the table for the day, I presume it is amendable. I therefore move "for the day" be stricken out.

The PRESIDENT—The Chair does not think the motion is amendable.

The question was again put on the motion of Mr. Bickford, and it was declared carried, on a division, by a vote of 63 to 25.

Mr. FERRY—I offer a resolution, and ask that it be printed.

Mr. MERRILL moved that the reading of the

resolution be dispensed with, and that it be printed.

There being no objection, it was so ordered.

The Convention resolved itself into Committees of the Whole on the reports of the Committees on Finances and Canals, Mr. SIEMAN, of Oneida, in the chair.

Mr. E. BROOKS—I move to strike out from the amendment adopted last night the words "at the same time."

The question was put on the amendment of Mr. E. Brooks, and it was declared carried, on a division, by a vote of 35 to 33.

Mr. GERRY—There is no quorum voting.

The question was again put on the amendment of Mr. E. Brooks, and it was declared carried by a vote of 78; the noes not being counted.

Mr. BELL—I would like to inquire of the gentleman from Richmond [Mr. E. Brooks] how he arrives at the amount of the sinking fund to be \$2,010,734.35?

Mr. E. BROOKS—I will answer the gentleman. Such is the statement made in the auditor's office, I mean the sinking fund on the 1st day of May, 1867. Now, if the gentleman will allow me, in order that we may not be confused in regard to the amount of this sinking fund, I will still further move to amend the first section by striking out the words, "Amounting on the said 1st day of May, 1867, to \$2,010,721.35." I make this motion because the amount is entirely unimportant whether it be \$2,010,000 on the 1st of May, or whether it be two or three hundred thousand dollars, more or less, on the 1st of July (I understand that it will exceed \$2,700,000 at that time) so long as provision is made for the sinking fund.

Mr. BELL—I do not fully agree with the gentleman from Richmond [Mr. E. Brooks]. I do think there is as much propriety in arriving at the exact amount of the sinking fund, as there is in arriving at the exact amount of the different canal debts, and we might as well leave the canal debts generally stated as to state them specifically, and as to omit stating the amount of the sinking fund. I hold in my hand the second volume of the Convention Manual and I see on the 149th page, that these different canal debts are specially stated with interest thereon to the 1st day of May last. I believe this statement agrees precisely with the amount now in the section under consideration. I also see by reference to the 46th page of the same document, that the general fund debt on the 1st day of October last, was \$5,636,622.22; I think that is the amount at which this general fund debt is now stated in the amendment now under consideration as being the amount on the 1st day of May.

Mr. CHURCH—It was altered to July.

Mr. BELL—All the statistics used in your report, give it the amount on the 1st day of October last. I also observe that the debt had a sinking fund at the same time of \$217,127.05, which if deducted from the debt, leaves the balance of \$5,425,495.17.

Mr. RUMSEY—I desire to ask whether this is not such an immaterial matter that the Committee on Revision will see to it, and put in the figures correctly; they can get it by going to the Comp-

troller's office. There will be no dispute about it. It is hardly worth while spending time on it.

Mr. BELL—I am not aware the Committee on Revision will have any more, or better data to compute these debts than we have now. At a great expense we have obtained the statistics from the different State departments which we have before us. This Convention is as competent to determine the exact amount of these several funds as the Committee on Revision. We should not take the amount of one of these funds with the interest thereon at one date, and the amount of another fund, the interest of which has been computed to some other, and different time. If we give the precise amount of these different debts to certain dates, we ought to give the precise amount of the sinking funds at the same date. It is a very simple and easy question. It is not necessary to be fogged on this subject, nor spend much time on it. If we arrive at the proper amounts and they can be obtained from this Convention document, which I presume will be found correct, we ought to put these amounts in this section.

Mr. E. BROOKS—I tried to get that statement, this morning at the Comptroller's office, but it was not open at the time the Convention met.

The question was put on the motion of Mr. E. Brooks, and it was declared carried, on a division, by a vote of 59 to 31.

Mr. CHURCH—There is another difficulty about this section as it now stands. I desire to suggest to my friend from Richmond [Mr. E. Brooks], since he has taken it in charge, that the first item is described to be the canal stock debt, contracted prior to the 1st of June, 1846. Now, sir, there is no such debt. There is no such debt contracted prior to the 1st of June, 1846. Every dollar of the debt for which that is intended to refer has been contracted since that time.

Mr. E. BROOKS—Since I have involved myself in so much difficulty, and the chairman of the Committee on Finances understands the subject so much better than I do, I hope he will exercise a large degree of charity toward myself and will amend the section so as to make it perfect.

Mr. CHURCH—The difficulty has arisen from the fact that you have stricken out what is certain and positive—what I obtained officially and with entire accuracy, and put in something which is inaccurate in several particulars. It would be more work to amend this and make it perfect than it would be to go back and put in what was in before.

Mr. LAPHAM—The chairman styles this in his report "the old canal debt." What does he mean by that?

Mr. CHURCH—So called.

Mr. LAPHAM—Why so called? This is a debt provided for in the Constitution of 1846, and yet the gentleman says it has been contracted since.

Mr. CHURCH—Yes, sir.

Mr. LAPHAM—All there is of it is that new obligations of the State have been issued to extend the time of the payment of that debt; but it is the old debt and the debt contracted prior to 1846, so understood and known by all men.

Mr. BELL—The Comptroller styles this debt

"the canal debt," under article 7, section 1, of the Constitution, and I see no objection to giving it that designation now. I find in the report of the Comptroller that the amount of this debt was, on the 1st day of May last, \$3,265,900. That certainly would meet the ideas of the gentleman from Orleans [Mr. Church], and would be a specific designation for that debt. I move to insert in the first line the words "the canal debt of 1846 (so called)."

Mr. BICKFORD—The object sought by this amendment will be obtained by striking out the word "contracting" and inserting the word "existing." So that it will read "the canal debt existing prior to the 1st of June."

The question was put on the amendment of Mr. Bell and it was declared carried.

Mr. MURPHY—I move to amend by inserting the words "for the payment of which." So that it will read "shall hereafter be known as the canal debt, for the payment of which the canal revenues are hereby pledged, etc."

The question was put upon the amendment of Mr. Murphy and it was declared carried.

The SECRETARY proceeded to read the second section as follows:

SEC. 2. The several debts specified in the preceding section, designated as the old canal debt of eighteen hundred and forty six, the general fund debt, the canal debt under the amendment of eighteen hundred and fifty-four, and the floating canal debt, amounting in the aggregate to \$21,407,682.22 on the 1st day of July, 1867, shall be paid as provided in the next section.

Mr. ANDREWS—Would it be in order to offer a substitute for the second and third sections.

The CHAIRMAN—Not at this time. A substitute may be offered for the second section.

Mr. ANDREWS—I will then offer the following as a substitute for the second section, with the idea of following it up with a substitute for the third.

The SECRETARY proceeded to read the substitute as follows:

SEC. 2. After paying the expenses of collection, superintendence and ordinary repairs, there shall be set apart and paid into the canal debt sinking fund, in each fiscal year, commencing on the 1st day of October, 1867, out of the revenues of the canals, the sum of \$2,418,000, to pay the interest as it falls due, and redeem the principal of the several debts specified in section 1 of this article, until the said several debts shall be fully paid or provided for; and the principal and income of said sinking fund shall be strictly applied to that purpose, and to no other purpose or object whatever. If in any fiscal year there shall not be contributed from said revenues at least the sum of \$2,418,000, the deficiency shall be supplied by taxation the next year. The remaining revenues of the canals in each fiscal year may be applied by the Legislature to the improvement of the canals. But preference shall be given in such application to the completion of the enlargement of the locks on the Champlain canal and to the removal of the bench walls on the Erie canal and increasing the supply of water therein.

Mr. ANDREWS—I desire simply to state the principle of this amendment. The amount which

is necessary in order to supply the several sinking funds existing under the Constitution of 1846, and under the amendment of 1854, as stated in the report of the Committee on Finance, is \$2,418,000 annually. The annual application of that sum will provide for all the pledges of the canal revenues now existing; and such applications will, in the year 1878, extinguish all the indebtedness of the State mentioned in the first section of this article which has been adopted by the Convention. After providing for these existing pledges, the section proposed, authorizes the Legislature to dispose of the remaining revenues of the canal; and the completion of the enlargement of the Champlain locks, and the removing of the wall-benches from the Erie canal, are the two things which more than all others are required to be done in order to give the canals their full navigable capacity according to their present condition, the provision which I have offered gives a preference to the application of the revenues to those objects. When that shall be accomplished, then the surplus revenues may be applied, at the discretion of the Legislature, in any way which may be deemed best, for the improvement of the canals or otherwise. This is the view in which the amendment which I have proposed was prepared.

Mr. COMSTOCK—Without taking up at this moment the subject of the enlargement or improvement of the canals I will offer an amendment first to take care of the public debt. I move to strike out and insert so that it shall read:

SEC. 2. The several debts specified in the preceding section shall be paid in the following manner: After paying the expenses of collection, superintendence and ordinary repairs, there shall be appropriated and set apart in each fiscal year, commencing on the 1st day of October, 1867, the sum of \$2,418,000 out of the remaining revenues of the State canals, as a sinking fund, etc.

This amendment proposes only a slight change in the two sections reported by the Finance Committee; but the change adopts a principle embodied in the amendment of my colleague. It takes the sum of \$2,418,000 as the annual contribution to the sinking fund, to discharge the existing debt of the State. I suppose it is known to members of the committee that the Committee on Finance have made a calculation which proves that annual sum paid in as a sinking fund will take care of the entire State debt, except the war debt, when and as fast as it matures. As a friend, and a sincere friend of canal enlargement and improvement, I am content to accept that feature of the report of the Finance Committee, and so I understand is my friend and colleague from Onondaga [Mr. Andrews]. The only difference is that my amendment proposes, first, to take care of the public debt, as an independent proposition. That being done we can then proceed to the other subjects indicated in his amendment.

Mr. BECKWITH—I think the gentleman from Onondaga [Mr. Andrews] has fallen into an error. If I understand his proposition correctly, it merely provides for the enlargement of the locks upon the Champlain canal. Now, by the act of the Legislature of 1864, it was provided that the prism

of the canal should be so enlarged as to be of the width of thirty-five feet on the bottom, and five feet in depth. That enlargement has been in part made, and if I am correctly informed almost wholly made. But there are portions of the canal where it has not been done. Most of the locks on that canal have been enlarged, and the Canal Committee have made provision for the enlargement of another. In order to render the enlarged locks of any avail to us, who do business upon that canal, it is necessary that the enlargement of the remaining small locks, and of the prism of the canal should be made, as contemplated by the amendment of the Constitution of 1854, and by the act of 1864. The gentleman says his proposition meets all the pledges of the State. Now I contend that the good faith of the State is pledged for the completion of the prism of that canal; and, therefore, I think his amendment does not cover the whole ground. It should cover it to the extent of the report of the Canal Committee. At another time I will draw and move an amendment to meet this object, if it becomes necessary.

Mr. COMSTOCK—In order to make the whole of my amendment strictly in order, I move it as section 2. My object is to get rid of controverted questions, how or where we shall proceed to the improvement of the canals, and settle first the question of the public debt.

Mr. ALVORD—There is no difference in reality between the two propositions of my colleagues [Mr. Andrews and Mr. Comstock] except this, that after applying \$2,418,000 as a sinking fund, or to increase the sinking fund from time to time in order to meet the liabilities of the State as already recognized in the first section of this article, my colleague on my left [Mr. Andrews] proposes to use the balance of the revenues which may accrue from the canals in a certain specified direction. It seems to me that there is so very little difference between the language of the two propositions that the design of my colleague on my right [Mr. Comstock] can be obtained by moving to divide the proposition. I hope, therefore, that he will consent to that arrangement, and move to divide the proposition of my colleague [Mr. Andrews] leaving that portion similar to his own, a separate and distinct proposition.

Mr. COMSTOCK—I take the language of the report of the Committee on Finance as the basis; and I proposed this amendment in order to conform to what I believed to be the general views of this committee on the subject of debt.

Mr. TILDEN—The simple principles on which it seems to me we ought to act in this matter are these: First, we ought to apply to all the sinking funds as they have been heretofore constituted, and as they now exist, the specific sums necessary to satisfy them. The money which the State has borrowed has, in the main, been borrowed subsequent to those enactments. It was borrowed on the faith of those provisions. A debtor who should take it into his head that a fund or sum which he had pledged for the payment of a debt could be adventured in the improvement of his works or property, and in the enhancement of his income, throwing upon the creditors the chance that his income might

still fail to be sufficient, would, by the universal consent of mankind and the universal practice in this respect, be regarded as a defaulter and a swindler. I hold, therefore, that the sinking funds as they now exist, in their fullness and in their entirety, should be preserved and protected. The second point is that the surplus, beyond what is necessary for this purpose, should be left in the discretion of the legislative power of the State for application as circumstances may require. These are the ideas which I have entertained upon this subject and still entertain. They involve, of course, some modification of that part of the report which appropriates, as a second lien, the surplus of the canal revenues for the payment of the bounty debt. But I am not entirely clear, and that is my only difficulty in concurring with the amendment of the gentleman from Onondaga [Mr. Andrews], that this specific sum is adequate to protect the sinking funds. In the report of the Finance Committee it is made adequate for that purpose by another clause, which is that the entire canal revenues are appropriated to the same object; and, inasmuch as the sinking funds as now existing are contingent on the amount of those revenues, it is not possible that any diversion should happen. The report of the Finance Committee, therefore, completely preserves the faith and honor of the State in this respect. If the amendment proposed by my honorable friend from Onondaga is adequate to that object it shall have my cheerful and hearty concurrence. On the point of preserving the integrity of the sinking funds I have a very decided opinion, from which, under no circumstances and at no time have I ever or can I deviate. If it is necessary for the State to have more money than it can have for any public object subject to these provisions, I would make a specific provision to raise it by new loans, or to raise it in some other mode; but it seems to me that the great State of New York should never tread one step backward, when it has once made an appropriation to a sinking fund, on the faith of which money has been loaned to it, or on the faith of which the debt involved in it has passed from hand to hand, and to new ownerships during the pendency of this provision. If I should vote for either of these amendments it will be with the understanding that, as to the amount appropriated, it is subject to examination and revision. On the one hand, I do not desire to tie up the surplus revenue beyond the amount necessary for this object. On the other hand I am inexorably fixed in the determination, so far as it depends upon me, to preserve, in their completeness and in their entirety, all the existing pledges. Let me say here that, although I shall acquiesce in the general sense of this Convention, my individual judgment does not assent to the consolidation of the sinking funds, even though I should stand alone upon that question, because I think that a debtor, having a first, second and third lien upon revenues or property should never assume to himself to consolidate those liens without the consent of the creditors. I am, myself, to-day trustee of sinking funds amounting perhaps to three or four times this sum involved in these sinking funds, and if I found any debtor attempt-

ing to change, without the consent of the creditors, any of the liens or obligations of those instruments I should think that it was a grievous departure from rectitude, from honor and from honesty.

Mr. ANDREWS—With the permission of the Convention I will strike from my proposed amendment the last clause—the clause relating to preference:

“But preference shall be given in such application to the completion of the enlargement of the locks on the Champlain canal and to the removal of the bench walls on the Erie canal and increasing the supply of water therein.”

Mr. HATCH—I do not rise to debate this question now, but I desire to say to the Convention before this question is disposed of that, either in committee or in Convention, after I have had time to examine this amendment, I intend to move an amendment to carry out the proposition contained in the amendment to the Constitution of 1846. There was a plan then recognized for the enlargement of the Erie canal and the improvement of the other canals. In the amendment to the Constitution of 1854 it is provided:

“The Legislature shall annually, during the next four years, appropriate to the enlargement of the Erie, the Oswego, the Cayuga and Seneca canals, and to the completion of the Black River and Genesee Valley canals, and for the enlargement of the locks of the Champlain canal, whenever from dilapidation or decay it shall be necessary to rebuild them, a sum not exceeding \$2,250,000.”

This amendment to the Constitution recognized a certain plan for the enlargement of the Erie canal, and the improvement of the lateral canals; and so far as the Erie canal was concerned, the law provided that the locks should be doubled from Albany to Buffalo. Now, it is well known that there are thirteen locks beyond Montezuma, between that place and Buffalo. These, in my opinion, if you adopt any plan here in the Constitution, should be enlarged; because it is plain to every one that three-fourths, and I do not know but seven-eighths of all the tonnage which passes over the Erie canal, enters the canal at the city of Buffalo. The proposition I make is a very plain one, that if there is to be any improvement made upon the Erie canal, it should be to double these locks. If no one else should propose an amendment of that kind, I shall propose it at the proper time. I would prefer to accept the amendment of the gentleman from Onondaga [Mr. Andrews] to leave the whole subject of the improvement of those canals to legislation, and not make any specific appropriation for any specific purpose.

Mr. VERPLANCK—I do not believe that the good faith and credit of the State, in point of fact has any peculiar champions in this body, although several gentlemen have talked as if they were the sole defenders of the faith and credit of the State. There are several things to be looked at, when you talk about impairing faith and credit. Suppose a man had a manufacturing establishment which was propelled by water, and had pledged faithfully all its yearly revenues for a certain purpose, and that through some cause, the water should disappear and sink into the earth. What

would be said of the man and of his good faith, if he should be still and not attempt to reclaim the water, and not make the revenue for the payment of his debt? It is the duty of the State to keep its pledges by keeping its sinking fund; but it is equally its duty to see that the canals from which the revenues are to be derived, are kept in repair, and improved so that they can earn the necessary revenues. I think it is quite as much a matter of honor and good faith to do the one thing as the other. The amount set apart, \$2,418,000, is amply sufficient to answer all the requirements of the sinking fund for the debts of the State, as is demonstrated by the figures of the Finance Committee. I propose, in order to complete this matter, if the amendment of the gentleman from Onondaga shall be adopted, to move an additional amendment. The amendment of the gentleman from Onondaga proposes to give the Legislature power, after taking care of the faith and credit of the State, to appropriate the surplus revenues to the improvement of the canals. It may be necessary within the next twenty years to do something more, and I shall therefore move the following amendment:

"The Legislature may, whenever in their opinion the commerce of the country and the interests of the State demand the improvement of the canals of the State, or any or either of the said canals, pass an act for such improvement, specifying the extent of the same, the time in which it shall be done, and the amount of money appropriated for the cost of the same, and cause the said act to be submitted to the people of the State for their approval at the next general election; and in case the same shall be approved by the people, the commissioners of the canal fund, unless the surplus canal revenues shall then become sufficient to complete the improvement specified in said act, shall borrow the money required for such improvement by loan upon the credit, and reimbursable out of the revenue of the canals. But no part of the principal of such loan shall be made due or payable until the year 1878. Such money so raised by loan shall be applied as directed by the act approved by the people, and in no other manner and for no other purpose."

Mr. KERNAN—Although, so far as regards providing for the present debt of \$21,000,000, I cannot see any difference between the amendments of the two gentlemen from Onondaga, nevertheless I prefer that the amendment proposed by Mr. Comstock, shall prevail; and for this reason. This amendment provides that there shall be set apart from the canal revenues \$2,418,000 a year, with other funds applicable to pay that debt. His amendment keeps good the pledge of the Constitution of 1846, as to that debt. The amendment proposed by Mr. Andrews goes further, and disposes, in this section, of the revenue which shall remain after making this provision for the payment of the debt. It seems to me we will find it easier, and a more practicable mode to make in this section provision for paying the debt, which all agree is to be paid out of the canal revenue, and for the payment of which the canal revenues are pledged. There may be differ-

ence and debate as to how we shall dispose of the remaining surplus revenue arising annually. It is just to the Finance Committee to say that, although we are talking very much as though something new had occurred, both gentlemen from Onondaga adopt exactly the policy of the Finance Committee so far as they provide for paying the debt of \$21,000,000; and the only difference thus far between the Convention and the Finance Committee (although there seems to be a desire in some quarters to make the appearance of a wider one), is that the Convention has decided that the \$18,000,000 advanced by taxation for the benefit of the canals, shall not be paid back from the canal revenues into the treasury and applied to pay the bounty debt. As all parties agree, as I understand it, that we shall make this pledge substantially in the manner proposed by the Finance Committee, to pay the debt of \$21,000,000, it seems to me we shall find no great difficulty in adopting the amendment of the gentleman from Onondaga [Mr. Comstock] which settles that matter and does not reach the debatable question, touching what shall be done with the surplus revenue remaining after setting apart \$2,418,000 annually. The other amendment, that of Mr. Andrews, goes further, and makes a disposition of the surplus revenue; a question upon which there seems to be more or less diversity of opinion.

Mr. VERPLANCK—Will the gentleman allow me to say that the amendment of the gentleman from Onondaga [Mr. Andrews], so far as it appropriated the surplus revenue to any particular purpose, has been withdrawn by him?

Mr. KERNAN—Then why not take the amendment of the gentleman from Onondaga [Mr. Comstock], which leaves before us the precise point we wish to settle.

Mr. ANDREWS—The third section of the finance report provides that the whole revenues of the canals shall be paid into a sinking fund "until the several debts specified in the first section of that report shall be fully paid or provided for; and that the principal and income of said sinking fund, together with the principal and income of the sinking funds now provided for the payment of said debts which shall have accumulated, etc.," or shall be applied to that purpose. That was proper under the scheme of the Finance Committee, retaining the first section; but by the first section as it now stands, there has already been a consolidation of all the sinking funds; and an appropriation to a sinking fund to be known as the canal debt sinking fund, of the accumulated sum which on the 1st of October shall belong to the sinking funds heretofore existing. So that it is now entirely unnecessary to provide that the income of the sinking funds now provided, etc., with their accumulations, shall be devoted to the payment of the debts of the State; because by the very designation of the canal debt sinking fund, and by the express provision already adopted, we have turned over the accumulation of the existing sinking funds to the one sinking fund known as the canal debt sinking fund, which is to be applied to that object. If gentlemen will follow through the amendment which I have

drawn, they will see that the language conforms to section 3 of the report of the Finance Committee, so far as it is applicable to the principle upon which the amendment is framed. There is no difference in principle at all between the amendment offered by myself and that offered by my colleague [Mr. Comstock]. My amendment simply provides for a sinking fund, and an annual appropriation for the payment of the debts of the State for which the canal revenues are pledged, and does not assume to direct as to the disposition of the surplus revenue year by year by the Legislature.

Mr. CHURCH—I would like to inquire of the gentleman whether in his amendment it is provided that if there is a deficiency in any year, it shall be made up by taxation.

Mr. ANDREWS—It is.

Mr. CHURCH—I desire to say a single word in relation to this amendment. This amendment confines the contribution to the sinking fund to pay the debt, to \$2,418,000. The only difference between this amendment and the section reported by the Finance Committee, is that the report of the Finance Committee provides that the whole revenues shall be paid into that sinking fund, and this limits the contribution to \$2,418,000. This contribution will pay the debts in the year 1878; and the provision that if there is a deficiency, if there is a less sum than this, in any one year, it shall be provided by taxation, makes it certain that the debts will be paid in 1878. That was the object which the Finance Committee had in reporting this provision, and I think the amendment preserves that object and carries it out. A single word upon the subject of confining the contribution to \$2,418,000. Strictly, according to my judgment, the whole revenues of the canals are pledged by the Constitution of 1846 for the payment of these debts, whether \$2,418,000 or more. But there is a construction of one of the sections of the Constitution of 1846, which renders it perhaps somewhat doubtful whether it is necessary to put the whole revenues of the canal into the sinking fund. And as I understand the practice in the department, they have not been in the habit, for the past few years, when there has been a surplus, of paying the whole revenues into the sinking fund. Therefore, so far as I am concerned, I am content to leave this section so as to make a sinking fund of this amount, and make it certain and positive, so that the outstanding debts will be paid in 1878; and I am the more inclined to accede to this from the fact that I think the locks upon the Champlain canal, and the other improvements upon that canal, ought to be completed according to the amendment of 1854 to the Constitution, and the laws which have been passed under it. I think this work ought to have been done before; and I confess that I was surprised, when I came to this Convention, to learn that that work had not been completed. And I think some improvement ought to be made upon the Erie canal. These bench-walls are undoubtedly, to some extent, a hindrance to navigation, and should be removed. The single locks west of Syracuse ought, as soon as it can be done, to be doubled. And then comes the Chenango extension, which I understand has

been about half completed, and the money is exhausted. That has claims upon the consideration of this Convention. I know nothing of the merits of that canal. It is a work that has been undertaken since I have had anything to do with public affairs at Albany. As a general thing I am opposed to commencing a work and leaving it half done. Whether there is any possibility of aiding them in this Convention I do not know; but, as the gentleman from Onondaga has proposed, I would leave the surplus of these revenues to be disposed of by the Legislature, without specifying for what particular object; so that the friends of the Chenango extension, as well as the friends of the other canals, can have a fair opportunity to present their claims to the Legislature. I was inclined to favor the amendment proposed by the gentleman from Onondaga [Mr. Comstock], and I would do so now if his amendment included the striking out of the words referred to by the gentleman from Onondaga [Mr. Andrews]. I think the criticism of that gentleman is correct in relation to the language appropriating the money accumulated in the present sinking funds, because the first section has designated that sinking fund in such a way as to make that language inappropriate.

Mr. COMSTOCK—What are the words proposed to be stricken out?

Mr. CHURCH—"Together with the principle and income of the sinking funds now provided for the payment of said debts, which shall have accumulated on the 1st day of October, 1867." These words are now inappropriate.

Mr. COMSTOCK—Then let them be stricken out.

Mr. ANDREWS—That is precisely my proposition, with those words omitted.

Mr. COMSTOCK—I will ask my colleague, whether his amendment provides that in case there is less than \$2,418,000 of revenue, it shall be supplied by taxation?

Mr. ANDREWS—It does, sir.

Mr. HATCH—I will ask the gentleman from Orleans [Mr. Church] whether he does not understand that the amendment of 1854 to the Constitution, pledged the surplus revenues of the Erie canal to the enlargement and the doubling of the locks upon the Erie canal. The recognized plan the amendment of the Constitution refers to is the enlargement of the Erie canal. The plan submitted, with which I think the gentleman is familiar, was to double the locks upon the Erie canal. And the Erie canal certainly, under any construction, is entitled to priority in construing this clause, because the Erie canal has paid \$23,000,000 of money toward these lateral canals.

Mr. CHURCH—I think the gentleman is substantially right in his statement in relation to the amendment of 1854; but I do not understand that there is any priority in that amendment between the Erie and the Champlain canals.

Mr. HATCH—The amendment of 1854 to the Constitution recognized a certain plan of improvement of the Erie and the other canals, and that plan is in the possession of the canal department.

Mr. LAPHAM—I prefer the amendment of the gentleman from Onondaga [Mr. Andrews] to the

other amendment for this reason: We have now declared the debts that are to be considered the canal debts of the State. We have provided also that the sinking funds in the treasury shall be consolidated with the fund known as the canal debt sinking fund. Now this amendment properly follows by providing that out of the revenues of the canals, \$2,418,000 annually shall be paid into that fund for the purpose of paying the interest and redeeming the principal of those debts. So far it is identical with the amendment of his colleague, as I understand it. But then his amendment goes further, and declares what shall be done with the remainder of the canal revenues over and above \$2,418,000, and it is that which gives to the amendment of the gentleman who sits before me [Mr. Andrews] its value. It is a direct provision, specifying what shall be done with the surplus revenue beyond what is necessary to pay the existing and recognized debts. That policy is one which, as chairman of the Committee on Canals, I favor, and one which I desire. I repeat that we have decided and resolved unanimously to hold these canals as State property, and to discharge the obligations which are now resting upon them. I insist that their revenues beyond that should be applied to their improvement, and that is what this amendment accomplishes.

Mr. KERNAN—I understand the gentleman from Ontario [Mr. Lapham] now to say that the amendment of the gentleman from Onondaga [Mr. Andrews] does direct what shall be done with the surplus after setting apart \$2,418,000 to the sinking fund.

Mr. ANDREWS—The language of the amendment is that the Legislature may apply the surplus revenues to the improvement of the canals. I would call the attention of the committee to another matter in relation to this. In constituting the sinking fund, provision was made that \$2,418,000 should be annually appropriated, or the deficiency made up by taxation. Then it was proper to say that there should not be any taxation, provided the surplus revenue of some previous year, when there was no deficiency, was enough to make up the deficiency of the year when a deficiency occurred. But when we apply a specific sum, and not the whole revenues, of course that provision is perfectly inappropriate. I challenge any gentleman to state any difference in principle between the amendment offered by my colleague and my own, excepting that those difficulties do not occur in mine which do occur in his.

Mr. RATHBUN asked for the reading of the amendment of Mr. Andrews, and it was accordingly read.

Mr. CORMSTOCK—I believe the criticism of my colleague is correct. There will be no surplus, and therefore that should be stricken out. It will make the section harmonious in all its parts to omit from line nineteen to line twenty-two. I will so modify my amendment.

The amendment was accordingly modified by striking out the following words:

"Unless in one or more of the years before such deficiency shall have occurred, there shall have been appropriated to said sinking fund over

and above the said sum of \$2,418,000 a surplus sufficient to make up said deficiency."

The question was put on the adoption of the amendment to the amendment, and it was declared lost, on a division, by a vote of 29 to 62.

The question recurred on the amendment offered by Mr. Andrews.

Mr. VAN CAMPEN—I move to amend by adding after the words "taxation next year" the following:

"But all such advances by taxation shall be returned to the treasury of the State from the canal revenues."

I think this same provision is found in the report of the Finance Committee, and every gentleman will see the importance of the principle that it involves.

Mr. LAPHAM—Allow me to suggest that that is provided for in another section, so that it is wholly unnecessary.

Mr. VAN CAMPEN—Does it not provide for it in the shortest possible manner to add these words?

Mr. CHURCH—That is provided for in a subsequent part of the article, in two sections; in the latter part of the fourth section, and in the eighth section.

Mr. VAN CAMPEN—I will ask the Clerk to read my amendment in connection with the rest of the section. If that is not the place for it, the committee can place it where they think best.

Mr. LAPHAM—The ninth section of the article reported by the Committee on Canals provides:

SEC. 9. Every contribution or advance to the canals of this State made since June one, eighteen hundred and forty-six, or which may hereafter be made, from any source except their direct revenues, shall, with interest thereon at current rates, be repaid into the treasury of the State out of the canal revenues, as soon as the same can be done consistent with the provisions of this article.

Mr. VAN CAMPEN—If this section, as read, is adopted by the Convention, I am satisfied. I wish to retain that principle in the Constitution of this year. I withdraw my amendment with pleasure.

Mr. SCHOONMAKER—I desire to avoid taxation for canal purposes as much as possible; and therefore suggest that in one year perhaps, the revenues may fall a little short of \$2,418,000, and in the subsequent year there may be a surplus. Therefore I suggest to amend by striking out the words "by taxation the next year," and inserting "out of the surplus revenues of the succeeding fiscal years, and if the same is not made up within two years out of such revenues, the deficiency then remaining shall be supplied by taxation the next year."

Mr. VERPLANCK—Every gentleman who has addressed the committee has claimed to be a friend to the canals. I have doubted whether all were the true friends of the canals, but I am inclined to think to-day I was mistaken; and I congratulate the canal interest and the people of the State that my friend from Orleans [Mr. Church] is really a friend of the canals, as he understands their interests. We are all friends

of the canals as we understand their interests. The result of the discussion will show who are the friends of that interest. I rise to ask the gentleman from Ulster [Mr. Schoonmaker] whether he will not withdraw his amendment. The proposition, as made now, has been well and carefully considered by gentlemen who are interested in the canals, and I hope it will pass without further amendment or discussion. We will only consume time, and get into difficulties if we attempt to improve the section. I hope, therefore, the gentleman from Ulster [Mr. Schoonmaker] will withdraw his amendment.

Mr. CHURCH—The amendment of the gentleman from Ulster will destroy entirely the object which the gentleman from New York [Mr. Evarts] and the gentleman from Onondaga [Mr. Comstock] desire in the amendment they have proposed to the report of the Finance Committee, that is, to confine the sinking fund to \$2,418,000 and to leave any surplus there may be in any year to be expended in improving the canals. This amendment would entirely destroy all benefits from this surplus, because if you should fall short in any one year, you will not tax to make up the deficiency and the consequence will be that you will be obliged to hold on for one or two years to see whether there is or is not a surplus; and if there is a surplus, instead of expending it in improving the canals you must apply it upon the deficiency. Now, I wish to do justice to the object these gentlemen have in view. It seems to me if we attempt to do anything, we should carry it out in good faith and leave the surplus to be expended.

Mr. SCHOONMAKER—The gentleman from Orleans [Mr. Church] desires indirectly to improve the canals by direct taxation; we want to avoid that.

Mr. CHURCH—I wish to improve the canals by providing that if there is a surplus over and above the outstanding debts, the canals shall have the benefit of it. I am opposed to taxation. It comes with very bad grace from the gentleman from Ulster [Mr. Schoonmaker] to talk about taxation after supporting the report of the Canal Committee which will involve the State in taxation to unlimited millions. I am in favor of taxation only to pay our outstanding debts and obligations, and nothing more.

Mr. BICKFORD—I would like to ask the gentleman from Orleans a question; the design of the section as it stands is that this debt called the canal debt in the amendment which is adopted, is to be paid in 1878. I wish to know what is the particular urgency that it should be paid in that year, and what great harm would be done if it should be allowed to run two or three years more?

Mr. CHURCH—The debts are due in that year and the sinking fund will pay them by that time.

Mr. LAPHAM—I hope the amendment will not be adopted, for I agree with the chairman of the Committee on Finance that this amendment, if adopted, virtually destroys the object of the amendment offered by the gentleman from Onondaga. The object of that amendment is to devote the surplus revenues over \$2,100,000 annually, to the improvement of the canals. Now, why should

gentlemen be sensitive on this subject, when we all know as well as any one can know, that it is scarcely possible that the revenues will fall short of \$2,418,000. It is supposable, it is true, but no man who has examined this subject can believe for a moment that the revenues will fall short of that sum. We have provided for a possible deficiency it is true; but that there is to be a deficiency nobody expects. Therefore, there is no occasion for being sensitive on that subject.

Mr. BICKFORD—I want to ask the gentleman from Ontario [Mr. Lapham] a question. Does not he contemplate that it is possible that as we now stand, the people of the State may be taxed indirectly to improve the canals.

Mr. LAPHAM—I have said it is barely possible that there may be taxation to make up the deficiency in the \$2,418,000. But it is provided that if there is a taxation for that purpose, the money shall be returned to the treasury out of the revenues of the canal.

Mr. E. A. BROWN—I am prepared, Mr. Chairman, to vote for the amendment of the gentleman from Onondaga [Mr. Andrews] as it now stands, upon the supposition that the Convention is to provide that the moneys which may be raised by taxation to supply the deficiency in the sinking fund shall be restored to the treasury of the State out of the surplus revenues of the canals at some future time. I shall venture to hope that no future Convention, and that no action of the people of the State hereafter, will repudiate that indebtedness, provided such an indebtedness shall be incurred on the promise of its being repaid out of the revenues of the canals.

Mr. LUDINGTON—I, perhaps, represent a portion of the State which feels quite as sensitive on the subject of these canal debts as any other portion of the State. I hope that the amendment proposed by the gentleman from Onondaga [Mr. Andrews] will be ratified by the committee.

The question was put on the amendment of Mr. Schoonmaker, and it was declared lost.

Mr. PARKER—Is an amendment now in order?

The CHAIRMAN—An amendment is now in order?

Mr. C. E. PARKER—I ask to have the proposition now before the Convention amended by inserting the words "or completion" after the word "improvement," so it shall apply to the extension of the Chenango canal. That canal is now in process of being extended from Binghamton to the State line, and I would not wish it to be shut out from its portion of these surplus revenues by any criticism on language. The proposition, in its present shape, is that the surplus revenues shall be applied to the improvement of the canals. I ask that they should be applied to the improvement and completion of the work now in progress, so there can hereafter be no doubt whatever of the intention.

Mr. VAN CAMPEN—I would like to say to the gentleman from Tioga [Mr. C. E. Parker] that it is the intention, as I understand it, of this Convention to remit to the Legislature the whole subject of the improvement and completion of this work. Therefore it is not necessary to insert

such language there. The Convention will either make provision for it or provide by express terms that the subject shall be left to the Legislature.

Mr. C. E. PARKER—I propose that the improvement and completion of the canal shall not be limited by any technicality that may possibly arise in the Legislature.

Mr. TILDEN—I would like to inquire of the gentleman who moved this amendment whether the State has made contracts for the other work upon the Chenango canal, and how nearly these contracts will carry the extension to its completion.

Mr. C. E. PARKER—I will inform the gentleman from New York [Mr. Tilden] that in 1863 a law was passed authorizing the extension of this canal; that a tax of three-sixteenths of a mill was in the three following years levied. With the money thus raised the work is now under contract with the exception of about ten miles. Ten miles of the work have been completed, twenty miles more are now in process of completion, nearly two-thirds of this work under contract is done, and but ten miles remain that are not under contract. There has been already appropriated \$800,000, or thereabouts, to the work, and it is necessary to have \$800,000 more to complete it.

Mr. TILDEN—How much will it take to complete the contracts now existing?

Mr. C. E. PARKER—I cannot answer the question.

Mr. CHURCH—I hope this amendment may be adopted. I understand that the amendment of the gentleman from Onondaga contains the word "improvement" of the canals, which would not include the Chenango extension. It allows the friends of that work to come to the Legislature and there claim a portion of the surplus funds. I think it right and proper that they should have that privilege.

Mr. LAPHAM—I hope the amendment will be adopted for another reason. The Chenango canal extension I regard as one of the most important improvements upon any of the lateral canals of the State. The object of that extension is to carry navigation into the richest coal region of the whole State of Pennsylvania, and if it is completed I have no doubt that this canal which has hitherto proved a non-paying canal, as the term is used, will become one of the richest of the lateral canals in the State. As the forests are disappearing, the wants of this State for fuel, with its increasing population, must be supplied by coal from the beds of Pennsylvania; and the object of this extension is to furnish to the navigation of that canal, and thus supply to the navigation of the Erie canal a large and valuable acquisition in the way of tonnage. The amendment proposed by the gentleman will enable the Legislature to appropriate so much of the surplus revenues as may be deemed necessary to the completion of that extension.

The question was put on the amendment of Mr. C. E. Parker, and it was declared carried.

The question recurred on the amendment of the gentleman from Onondaga [Mr. Andrews] as amended by the gentleman from Tioga [Mr. C. E. Parker].

Mr. TILDEN—On the question now before the

committee I ask a division, first, on that part which provides a sinking fund, and second, on the part which provides for the application of the surplus revenues of the canals.

The SECRETARY proceeded to read the first division as follows:

"After paying the expenses of collection, superintendence and ordinary repairs, there shall be set apart and paid into the canal debt sinking fund in each fiscal year, commencing on the first day of October 1867 and out of the revenues of the canals, the sum of \$2,418,000 to pay the interest as it falls due and redeem the principal of the several debts specified in section one of this article, until the several debts shall be fully paid and provided for; and the principal and interest of said sinking fund shall be strictly applied to that purpose, and to no other purpose or object whatever. If in any fiscal year there shall not be contributed from said revenues at least the sum of \$2,418,000, the deficiency shall be supplied by taxation the next year."

The question was put on the first part of the amendment, and it was declared carried.

The SECRETARY proceeded to read the second division, as follows:

"The remaining revenues of the canals in each fiscal year may be applied by the Legislature to the improvement and completion of the canal. The tax authorized to be levied to provide for the sinking fund and to pay the floating canal debt is hereby suspended after the first day of October, 1867."

Mr. BICKFORD—I move to amend after the word "canals" by inserting the words "or in such other manner as the Legislature may direct"—the same words which are contained in the fifth section of the report of the Finance Committee. The object of that amendment is that the whole matter may be under the control of the Legislature, either to improve the canals and extend them or complete them and to apply the funds for other purposes of internal improvement as they may consider the good and common benefit of the State may require.

Mr. VERPLANCK—Do you intend to give the Legislature unlimited power to apply them to local railroads?

Mr. BICKFORD—I propose that the Legislature shall have the power to apply these revenues to any purpose they think the public good requires.

Mr. VERPLANCK—I hope the amendment will not prevail.

Mr. BICKFORD—I hope it will. [Laughter.] This surplus of canal revenues is really due to the State. That is agreed to on all hands, because the State has advanced it in taxation to the amount of \$18,000,000, and it is really due to the whole State from the revenues of the canals. It should be applied in such manner as the Legislature of the State shall deem to be for the public good and for the general prosperity and happiness of the people. It should not be confined to any particular improvement or to any particular object, but it should be entirely in the discretion of the Legislature to apply it for the public good whenever the public good may thereby be promoted. It is unjust to the remote counties of the State that have been taxed to make up this sur-

plus that it should be applied in a particular manner when in all probability that particular manner can in no way benefit those distant parts of the State. This is a matter that should be left to the discretion of the Legislature.

Mr. BECKWITH—I think the amendment is not at all necessary. The provision now under consideration, fairly gives the Legislature power to dispose of the surplus revenues for the improvement and completion of the canals. It says the Legislature may, when the money is once paid into the treasury of the State, unless there be some prohibition in the Constitution, do whatever they will with the money. Therefore the amendment is not necessary. Once the money is in the treasury of this State, and there is no prohibition in the Constitution, the Legislature can do with it as it chooses.

Mr. BICKFORD—Does not the gentleman know that the most common thing in the world is to construe the word "may," to mean "shall"? And will it in this case fail to be construed, to be a direct instruction that the Legislature shall apply the surplus funds in a particular way.

Mr. BECKWITH—I have no doubt of that construction; but the word will not be construed to our injury. Suppose the surplus revenues to amount to a very large sum, to a much larger amount than is necessary for the improvement of the canals, is that money to lie idle? Not at all; once in the treasury, the Legislature must dispose of it as it sees fit. The law is well settled, especially in this State that the Legislature is unlimited, absolute and supreme, in all matters regarding the interests of their constituents where they are not expressly prohibited in its exercise by the Constitution of the United States or the Constitution of this State.

Mr. HARDENBURGH—I desire to ask the gentleman why insist then, why not leave it to the determination of the Legislature.

Mr. BECKWITH—I suppose it is not at all necessary, any further than as an expression of the opinion that we are in favor of such a disposition of the surplus revenues whenever the demands of commerce require the canals to be completed or properly improved.

Mr. BICKFORD—Suppose it is as represented, what harm can this amendment do? It only renders certain, what he thinks as a lawyer the word "may" means. Now it places it beyond any doubt, so that plain people who are not lawyers can understand exactly what it does mean.

Mr. BECKWITH—I do not think it accomplishes any harm. I do not understand from the vote of this Convention the other day, by which the eighteen millions were stricken from the first section, that we thereby repudiate the payment of that eighteen millions by the canal. The section reported by the Canal Committee, if my recollection serves me aright, provides even that shall in the end be paid if the State desires it. I do not suppose there is any harm in the provision; but it is, in my judgment, entirely unnecessary.

Mr. BICKFORD—As my amendment has not been acted upon, I will modify it at the suggestion of some gentlemen, by inserting the words, "or for such other purposes as the Legislature shall

direct," instead of the words "or in such manner as the Legislature shall direct." This amendment is evidently just and fair; I hope it will prevail.

The question was put on the amendment of Mr. Bickford, and it was declared lost, on a division, by a vote of 25 to 56.

Mr. HATCH—I move an amendment, for the purpose of making it a part of to-day's proceedings, so I can move it hereafter when we get in Convention; the amendment is to the effect that the surplus shall "be applied and appropriated to the improvement of the Erie, Oswego, Cayuga and Seneca canals, according to the plan of the amendment of 1854 to the Constitution, together with the enlargement of the remaining small locks, as heretofore provided by law on the Champlain canal, to the size of those now on the Erie canal; and any surplus thereafter for the improvement of the remaining canals of the State." I hold that under the amendment of 1854 the canal revenues were to be so applied. I present the amendment, in order that it will be before the committee.

Mr. E. A. BROWN—I have no desire to occupy any time in the discussion of the general subject which has been so largely and so ably discussed; but there are one or two points that have been touched upon by gentlemen from time to time to which I shall barely allude for a single moment. The amendment of the gentleman from Erie [Mr. Hatch] is a repetition, in some sort, of such suggestions as have been heretofore made. The idea is, that the money that may be at any time to the credit of the State—arising out of the resources of the State of New York, in all its departments, in all their extent, shall be used for the purpose, if not exclusively, almost exclusively, in the finishing, enlarging and improving that great thoroughfare, the Erie canal. In connection with that, we are told we must not tax commerce; that when we shall have made the Erie canal of the size of a ship-canal so that it will do as much business as will be done on Lake Erie, Lake Ontario and the Hudson river; we must then cease to derive any revenue from it for the benefit of the State at large, but give such benefits to the western trade and the people of the Western States; that not a single dollar of the expenditures which may have been theretofore made shall be refunded to the treasury of the State. Now, in looking for a single moment at the canal system of the State, and opening the map upon which are delineated these canals, I find nearly nine hundred miles of canals through the different portions of the State. More than five hundred miles of them are lateral canals. You might as well lop off your right arm, cut off your right leg, take off any of your members and leave the naked trunk only, as to lop off, abandon and disregard, and leave without protection and support, improvement or extension, the lateral canals of this State. Mention has been made by one gentleman of the Chemung canal and its importance to a large portion of the State, and its contributions directly and indirectly to the great commercial emporium. Mention has been made by another gentleman to the same effect with reference to the Chonango canal, which is denounced by others, in

the notes upon the table, furnished as is supposed by the auditor in the Manual, as a non-paying canal, and as not even paying for superintendence and repairs. But sir, is not that section of the country vastly benefited by this canal? Has not its population been largely increased by it, and has not property in that section of the State been increased in value by it? Has not taxable property been multiplied, as well as the general interest of the people of the State, been promoted by that poorest of these canals? And, sir, when the hour of necessity is upon us, as it soon will be in nearly all parts of the State, the time when it will become necessary for us to draw from the coal fields of Pennsylvania our fuel, will not that canal, with its extension completed, become a thoroughfare, and an important portion of the canal system of the State, as important to that system as is the right arm to the whole system of the human body?

Mr. VERPLANCK—I understand the resolution of the gentleman from Onondaga [Mr. Andrews] has been modified so as to leave the subject to which it refers to the Legislature.

Mr. E. A. BROWN—I understand the gentleman from Erie [Mr. Hatch] to move to take care of the Erie canal and to let the rest of the canals die and rot and dry up and be sold at auction. I would like to ask the gentleman, when you sell these lateral canals at auction (including the Black River canal) where will you get your water for the long level of the Erie canal, when you have already stopped up the channel, so that scarcely any water passes the feeder of the Black River dam, in ordinary water, a part, and nearly the whole of which comes into your Erie canal as a feeder, and even with that, in a dry time, you can hardly drag your boats through its channel without scraping the bottom. The Black River canal is now a necessary and an indispensable feeder for the Erie canal, and without it that canal cannot be sustained in a navigable condition for one single month. I stated that the several lateral canals alluded to were important in many particulars as a part of the general canal system of the State. I wish to say this Black River canal is important as a part of the system in a larger sense. The whole country through which it is made has been largely benefited; so has the rest of the State, in many important particulars. I do not allude to the Champlain canal, as a lateral canal; it is more than that. It has been proposed to confine the expenditure of the surplus money of the State, no matter in what manner raised, to the finishing up the improvements of the Erie canal. It is important that the Legislature should be at liberty at all times to do anything and everything that is necessary, as well for the Erie canal as for the lateral canals, and I am decidedly opposed to tying up the Legislature by any action of this Convention, in one direction or the other. While I am on the floor I desire to say a single word further in regard to the general subject. I am entirely opposed to what seems to be the sense of this Convention, or a considerable portion of it, of modifying in any respect, or releasing in any way the liens upon the canal revenues for the purpose of pay-

ing the debts of the State which have been chargeable upon them by existing constitutional provisions. I am opposed to tying up the Legislature so that they shall not make any enlargement or improvement that circumstances hereafter may demonstrate to be essentially necessary. I do not believe that the time has come to abandon the lateral canals, and I shall vote against any provision in the Constitution providing for the enlargement or extensive improvement of the Erie canal, to the exclusion of other canals. I am entirely satisfied from the discussions here and from what I have learned elsewhere, that by proper improvement of the present channel of the Erie canal, by making perhaps a few new and additional locks at particular points, one at Syracuse, if you please, you will so improve that structure and increase its capacity that it will reasonably do all the business that it is now, or is soon likely to be called upon to do. One thing more is desired. I shall vote in favor of such a proposition as will leave the subject entirely to the Legislature to say what those improvements are which are thus required, and when they shall be made. I am opposed to restricting the expenditure of even a single dollar of the surplus revenues of the canals specifically and exclusively to this work or to that work; I wish it to be left entirely to be disposed of as future experience and necessity shall from time to time demonstrate and require.

Mr. BECKWITH—I am in favor of the amendment proposed by the gentleman from Onondaga [Mr. Andrews] but am opposed to the amendment offered by the gentleman from Erie [Mr. Hatch].

Mr. KINNEY—I rise partly to a question of privilege. There is no one in this part of the Convention who has heard the amendment now before the Convention. I do not know what we are talking about, therefore I desire that the amendment of the gentleman from Erie [Mr. Hatch] shall be read.

The amendment was again read for the information of the committee.

Mr. BECKWITH—I say I am opposed to this amendment, and I will state very briefly my reasons. I prefer that this whole matter should be left to the Legislature—to their good sense and to their good judgment. I am opposed to the amendment of the gentleman from Erie [Mr. Hatch] for the additional reason, that there is no provision made for the completion of the prism of the Champlain canal which is nearly finished.

Mr. HATCH—As I understand, that is provided for by law.

Mr. BECKWITH—I am opposed to the proposition of the gentleman from Erie [Mr. Hatch]. It leaves the prism of the Champlain canal in an unfinished condition. I think we had better leave it to the Legislature, and not fix any priority in the Constitution—for a case may arise where it will be necessary to make some improvement of the lateral canals, as they are called, but if this proposition be adopted it cannot be done out of the surplus revenues of the canals, while there is anything to be done on the Erie or Champlain canals. I do not desire that the canal which I more particularly represent shall have any preference, or

any priority over other canals. All I ask is that it shall be put upon an equal footing with the others.

The question was put on the amendment of Mr. Hatch, and it was declared lost.

Mr. RATHBUN—I wish to propose an amendment to the section by adding after the word "direct" in the fifth section of the report of the Committee on Finance, the following words "but shall at no time be anticipated or applied."

Mr. TILDEN—I hope the amendment of the gentleman from Cayuga [Mr. Rathbun] will prevail, else we will expose this surplus to be the substrata of some new fiction in the way of expenditure.

Mr. LAPHAM—I am in favor of the object sought to be obtained by this amendment. But if it is left in the form proposed by the gentleman from Cayuga [Mr. Rathbun], it may conflict with another section. I, therefore, suggest to the gentleman that he add these words: "shall not be anticipated or applied except as provided in this article." If that is done, I have no objection.

Mr. BECKWITH—What is the reason for that?

Mr. LAPHAM—There is a section to be proposed with reference to the proposition for the enlargement of the canals, to be submitted to the people, raising loans upon the revenues. It is in every just sense an anticipation of the revenues.

Mr. RATHBUN—I do not see that there is any objection whatever to the addition of this amendment, or that it will conflict with the action of the people upon the main question of commencing a system of debt for the more speedy enlargement of the canals. It supposes simply a surplus of the revenues, as provided by the section, so far approved by the committee. As to that surplus, I desire that this restriction should be adopted, that the Legislature shall not, by appropriating or anticipating the revenues, thereby cause an accumulation of debt, nor pledge it for the purpose of raising money. I desire that they shall be confined to the surplus actually on hand. The section referred to by the gentleman from Ontario [Mr. Lapham] is a proposition to submit to the people themselves, and by that to confer new, extended and enlarged powers upon the Legislature, which cannot conflict with this amendment if it is adopted. This is a restriction applied to the Legislature, in regard to the surplus, if there is any, and is to extend no further. If you authorize the people to assemble together and pass upon a proposition as directing the Legislature, how can these two things come in conflict? I cannot see. I desire that this amendment shall prevail, because I do not wish the Legislature to understand that they have any right whatever to go one single dollar beyond the actual money in hand to be used after the commencement of this improvement.

Mr. SPENCER—I would like to inquire whether, under the power that is conferred by the amendment of the gentleman from Onondaga [Mr. Andrews], that can be done? That amendment gives no power except to apply the surplus revenues. There can be no surplus revenues until they are realized; therefore, under that specific power, there is no authority for anticipat-

ing the revenues, and of course the amendment is entirely unnecessary.

Mr. CHURCH—I think the amendment of the gentleman from Cayuga [Mr. Rathbun] is right, and should be adopted. It is well known that the Legislature of this State did, under a similar clause, pass a bill anticipating these revenues, and borrowed a large amount of money. That was held, to be sure, to be unconstitutional, but as a matter of safety and prudence, I think it wise to insert that amendment. I agree entirely with the gentlemen from Cayuga [Mr. Rathbun] that this amendment would not in the least conflict with the proposition which the gentleman from Ontario [Mr. Lapham] has suggested, of amending the Constitution. Not at all. Because if an amendment was submitted to the people to anticipate these revenues, and they should adopt it, of course that would be binding, and would prevail over any words which we might insert in this clause. I see no necessity, therefore, for the amendment suggested by the gentleman from Ontario [Mr. Lapham].

The question was put on the amendment of Mr. Rathbun, and it was declared carried.

Mr. LAPHAM—I now propose to add the words suggested by myself, "except as herein otherwise provided."

Mr. TILDEN—I ask the gentleman from Ontario [Mr. Lapham] whether it will not be safe to insert those words when the other section shall be adopted, if it is adopted. It is not certain that this Convention will adopt any other section.

Mr. LAPHAM—I think it is as certain as the revenues of the canal are. I proceed upon that supposition. I therefore propose this amendment at this time because we are now considering the section in which it belongs. It can do no harm if there is a provision to the contrary; these words will not do any injury whatever. But if we should adopt the other section, it will to some extent, conflict with the unqualified expression employed by the gentleman from Cayuga [Mr. Rathbun]. The addition I suggest will obviate this probable difficulty. I hope, therefore, the committee will add the words "except as herein otherwise provided."

Mr. RATHBUN—I hope the committee will not open the door in regard to this matter except in a legitimate way. There is no doubt whatever, if the Convention insert a section in this Constitution authorizing the Legislature to submit a proposition to the people of the State of New York in regard to the enlargement of the canal, or any increase of expenditure, that it is in the power of the people to go to any extent they please. And this provision is not in the way. That is a power entirely independent of it. The two things are not in conflict, nor can they be in conflict, because that provision would leave the whole power to the people, and they have the right to say how much and what funds shall be obtained and appropriated for that purpose or any other. I object to the proposition, because there are no other provisions in the Constitution to which it can refer. It is in anticipation of something. If the proposition of the gentleman from Ontario [Mr. Lapham] should prevail, and thus open this little door that will give the Legislature

room to step in and increase the expenditures, and anticipate the revenues, not only for one year but for ten years, I desire that this door shall not be opened indirectly, but that the proposition of the gentleman from Ontario [Mr. Lapham] shall be broad enough and clear enough to show what the intention of this Convention is. I hope, therefore, the amendment will not be adopted.

The question was put on the amendment of Mr. Lapham, and it was declared lost.

Mr. BELL—Is an amendment now in order?

The CHAIRMAN—It is.

Mr. BELL—I offer the following amendment, which I will read. It is to amend the first clause of the amendment offered by Mr. Andrews:

"So that the deficiency, if any, shall be supplied by a loan upon the credit of the sinking fund; and in case such deficiency cannot be obtained at a satisfactory rate of interest, the same shall be supplied by taxation, so as fully to preserve the public faith."

The CHAIRMAN—An amendment to the first division is not now in order.

Mr. ALVORD—I move to amend the proposition of the gentleman from Onondaga [Mr. Andrews] after the words (I think I can repeat them very nearly) "the remaining revenues of the canals may be by the Legislature applied to the canals," "and if not so applied they shall remain a part of the canal debt sinking fund," so they cannot be applied to anything else, so they will be retained as a part and parcel of the canal revenues.

Mr. BICKFORD—Is that amendment now in order?

The CHAIRMAN—It is in order.

Mr. ALVORD—The reason I have offered the amendment is this. We have got so far in our action as to say that the payment of the eighteen millions of indebtedness on the part of the canals, which is derived from taxation and other sources, shall be postponed for the present. It will eventuate in this: the putting of this surplus into the canal debt sinking fund, in addition to that which we appropriate directly to-day, that which the gentleman from Orleans [Mr. Church] suggests as the best thing that can be done for the canal namely, at the earliest possible moment to reduce the tolls.

Mr. TILDEN—I hope this provision will be adopted. The only legitimate proposition to which this surplus can be applied, is to either repay the State for advances to improve the canals, or to pay the debt (which always is a very good disposition of surplus), or to add it to the sinking fund to accelerate the payment of debt, and thereby free and discharge the public works from the liens which are upon them. I think it would be unwise to leave anything that can be applied in that way to be scrambled for in the Legislature. I therefore shall vote for this amendment.

Mr. RUMSEY—I hope this amendment will not be approved of by the committee, and for this reason. We have made in the article as we have adopted it already, provision for the payment of the whole of the canal debt by the time it falls due, so fully that there can be no mistake with regard to it. If we have a surplus it is eminently right and proper that we should leave it to the

Legislature to dispose of as they may see fit. Because, we have heavy liabilities for bounties to provide for which will require taxation upon the people now; and if there are any surplus revenues arising from the receipts of the canal, why should not the Legislature use it for the ordinary expenses of the State instead of imposing taxes upon the people for the purpose of raising money and leave that surplus without any disposition being made of it, to be scrambled for in the Legislature for other purposes. Leave it to the Legislature so that they may apply it for the purpose of relieving the State from taxation.

Mr. KERNAN—I hope the amendment will prevail, and I think the reason given by the gentleman from Onondaga [Mr. Alvord] is one that should have great weight. If the Legislature do not apply the surplus revenue from the canals to improving the canals then I think they should not raise by tolls revenue to go into the treasury to be appropriated for other purposes, as, for instance, donations to railroad companies and other private and local purposes, as is too often done when there is no money in the treasury. If money is not needed to pay debts or in some other way relieve the people from taxation or to improve the canals, then let us be able to reduce the tolls. That, I think, will do more for commerce than a great many of the laws that are talked about. Because if there is a surplus and the Legislature should not deem it necessary to improve the canals then it should discharge and pay the canal debt, whereby we will be enabled to have what is very desirable—no more tolls than is necessary to keep the canals in repair; and that will enable the canals to compete with the railroads and bring the commerce through our canals which is desirable to have brought into the State.

Mr. BICKFORD—I hope the amendment of the gentleman from Onondaga [Mr. Alvord] will not prevail. I am not so anxious as some gentlemen here that the time shall come when the Erie canal shall do business without tolls being collected. I think that gentlemen look in the wrong direction when they anticipate such a thing as that. To make it fair or just, the canals should refund to the State the large sums which have been advanced, and the tolls should not be reduced. It is not a very small thing for the people of this State to provide a channel of communication free to the great West. I have no doubt that the Erie canal will have abundance of business to do for the future, and that too with fair and moderate tolls. And I think it is very unfair indeed that the tolls should be reduced, certainly until every advance which has been made to the canals shall be repaid. This amendment provides that if the Legislature shall not use this surplus in improving the canals that it shall go into the sinking fund to pay off the debt, before it becomes due; and in the mean time the people are to be taxed to pay the bounty debt and other burdens which rest upon them. Now, is it not fair, if the Legislature do not see fit to use this surplus for the purpose of improving the canals, that instead of paying a debt before it becomes due they should relieve the people from immediate taxation by applying it for instance on the bounty debt, or for some other purpose that is for the public good? I

insist that this is a most unfair amendment. It amounts to this—that the surplus revenue is to be applied to the sinking fund, unless the Legislature shall see fit to apply it for the improvement of the canals; that is what it amounts to; and I insist that it is very unfair toward other portions of the State, which have provided by taxation for this improvement. Now, when the surplus revenues are greater than are needed to pay the debts of the State as they fall due, the people still have got to be burdened with taxation, unless the Legislature choose to improve the canals. It is a very unfair thing indeed, sir, and I hope the amendment will not prevail.

Mr. HATCH—I hope the amendment of the gentleman from Onondaga [Mr. Alvord] will prevail, and I desire to see it prevail for the reason which the gentleman from Oneida [Mr. Kernan] has given here, and that is, that none of the revenues of the canals of the State shall be applied for the purposes of government, if I understood him. I have looked, sir, in vain to the debates in the Constitutional Convention of 1846 to find the first member of that Convention standing up there and claiming that a dollar of the revenues of these canals should be applied for the purposes of government. Mr. Hoffman, if he gave an emphatic expression to any one sentiment, repudiated the idea of using the revenues of a public highway for the purposes of government. And, sir, I was very glad in listening to the very elaborate and eloquent speech of the honorable chairman of the Committee on Finances [Mr. Church], to hear him announce that he did not believe in holding the canals of the State only for profit. And I was very glad, too, sir, to find the gentleman from New York [Mr. Tilden] upon the same platform with Mr. Hoffman and others in that Convention. I shall at the proper time move an amendment which I have heretofore submitted to the Convention, and which I will now read.

"After payment of all the advances of the State, and interest upon the same, for the construction and maintenance of the canals, no more or greater tolls shall ever after be levied upon the said canals than shall be sufficient for ordinary repairs and improvements."

And, sir, when I move that amendment I shall ask the indulgence of the Convention to present some considerations in favor of its adoption.

Mr. BICKFORD—I wish to make one other suggestion. The real effect of this amendment of the gentleman from Onondaga [Mr. Alvord] is to force the Legislature to apply this surplus to the improvement of the canals. It will have that effect; for it will be argued that unless it is so applied it will remain idle in the treasury, doing no good and not even paying any debt; because the debt is not due and it cannot be applied for any other purpose. And, therefore, I say its real object is to force the Legislature to apply it in improving the canals, although it may not be, in their judgment, proper that the improvement should be undertaken. It commits the people to the improvement as fast as means are provided for that purpose.

Mr. ALVORD—I will answer in a very brief way, sir, the gentleman from Jefferson [Mr. Bickford]. If he will read this article as it is prepared

either by the Committee on Canals or the Committee on Finance, he will see that it provides that when there is money enough in the treasury in this sinking fund to pay these debts, then there is no further contribution by way of revenues from the canals to the sinking fund; as a matter of course the entire of the amount is, after that time, at the disposal of the Legislature.

Mr. BICKFORD—In the mean time—before it falls due?

Mr. ALVORD—In the mean time, before it falls due, under the rule which has always obtained, and which of course will obtain, in all fiscal affairs of this State, all this revenue will be at interest, accumulating until about the time when there shall be sufficient in the treasury to pay the entire of this debt, which time will arrive very much quicker in consequence of no appropriation of the surplus to canals, and when the time shall arrive they may be appropriated as the Legislature shall then direct it. It is for the purpose of hastening that time, in the event of their not disposing of them in any other direction, that my amendment is offered.

Mr. BECKWITH—I would like to inquire of the gentleman from Onondaga [Mr. Alvord] whether if these funds coming through the revenues of these canals should be left in the sinking fund more than enough to pay the debt for which that sinking fund is provided, whether that surplus will be applied on the \$18,000,000 if the Legislature see fit?

Mr. ALVORD—I do not understand the gentleman.

Mr. BECKWITH—Suppose there should be accumulated in the sinking fund, in consequence of this amendment of the Constitution, a large surplus, can the Legislature apply it on the \$18,000,000?

Mr. ALVORD—I am of the opinion that when sinking funds shall arrive at that point so as to insure the entire withdrawal of the debt, then by their action they can dispose of them as they please. The sinking fund ought to exist as an exceptional fund for their revenue.

Mr. BECKWITH—When it does get there, it can be applied on the bounty debt if they see fit.

The question was put on the amendment of Mr. Alvord to the amendment of Mr. Andrews, and it was declared carried, on a division, by a vote of 63 to 19.

The question was then put on the last part of the amendment of Mr. Andrews, and it was declared carried.

Mr. VERPLANCK offered the following as an addition to the second section:

The Legislature may, whenever in their opinion the commerce of the country and the interest of the State demand the improvement of the canals of the State, or of any or either of the said canals, pass an act for such improvement, specifying the extent of the same, the time in which it shall be done, and the amount of money appropriated for the cost of same, and cause the said act to be submitted to the people of the State for their approval; and in case the same shall be approved by the people, the commissioners of the canal fund, unless the surplus canal revenues shall then have

become sufficient to complete the improvement specified in said act, shall borrow the money required for such improvement by loan upon the credit and reimbursable out of the revenues of the canals, but no part of the principal of such loan shall be made due or payable until after the year 1878. Such money so raised by loan shall be applied as directed by the act approved by the people, and in no other manner, and for no other purpose.

Mr. CHURCH—I would suggest to the gentleman from Erie [Mr. Verplanck] whether he had not better defer the offering of that amendment until we get through the other sections of this article, and let it come as an independent proposition? It can be offered anywhere then.

Mr. VERPLANCK—It belongs properly here, and I do not see any reason why it should not be now considered as a portion of this scheme. You have provided for these surplus revenues outstanding, giving them to the Legislature for the purpose of improving the canals. This proposes, in addition to that, if the Legislature shall think it is important to do any work on those canals, they may pass an act and submit it to the people; the work may be done and approved by a vote of the people of the State.

Mr. CHURCH—The only disposition which was made of the surplus revenues, so far as the second section is concerned, is the surplus revenues that will accrue during the time the outstanding debt is being paid, over and above the \$2,418,000. After the debt has been provided for, that section will be inoperative. The two sections of the financial article provide for the disposition of the surplus revenues after the outstanding debt is provided for. I submit to the gentleman, that until we dispose of this, or make some provision in relation to it, it is premature to offer this proposition.

Mr. VERPLANCK—I think not. I think the reason the gentleman states is the very reason that should induce action on the subject now that we may know what the object of the Convention is in relation to these anticipated revenues.

Mr. TILDEN—The thirteenth and fourteenth sections of the report of the Finance Committee provide a general scheme which is to govern the future policy of the State in respect to the contraction of debt. These provisions are adopted from the Constitution of 1846. They are substantially the celebrated clause called the "people's resolution," which provides guards and restrictions in respect to the creation of debts. If I understand the amendment of the gentleman from Erie [Mr. Verplanck], it proposes to leave to the Legislature to submit to the people the question of the creation of debt in a different manner from what is provided in those sections. I think that the proper time to consider that question is when we consider those other sections. Sir, is this Convention prepared to go to the people on the issue that all those provisions of the Constitution of 1846, which gave it any acceptance by the people—which secured its adoption—although it contained many things, in my judgment, unwise and injudicious, shall be discarded? Are we prepared hastily to strike those provisions out of the Constitution, so that the people will

say that whatever there was bad in that Constitution this Convention has retained, and all that gave it its value this Convention has abandoned? Sir, I cannot collect now the entire and exact scope of the proposition of the gentleman from Erie [Mr. Verplanck]. I should like to consider it with reference to, and in connection with, the thirteenth and fourteenth sections. I am not prepared now to pass upon it, disconnected with those provisions.

Mr. VERPLANCK—The fourteenth section provides that "except the debts specified in the twelfth and thirteenth sections of this article, no debt shall be hereafter contracted by or on behalf of this State, unless such debt shall be authorized by a law for some single work or object to be distinctly specified therein." It may be necessary for the Legislature in their guardianship of the canals to provide for several objects in the same act that they shall submit to the people; and therefore section 14 of the report of the Finance Committee does not reach the case. Again, that section provides that "such laws shall impose and provide for a collection of a direct annual tax to pay, and sufficient to pay the interest on such debt as it falls due; and also to pay and discharge the principal of such debt within eighteen years from the time of contracting the same." My amendment provides simply for a necessity that may arise. After paying a certain amount to the sinking fund, to pay the yearly interest of the debt and principal as it falls due, we have given the balance to the Legislature for the improvement and completion of the canal. That revenue may be large; it may be nothing. Some exigency may arise making it highly important that some additional aid should be afforded for the improvement of the canals. When the three avenues to the Mississippi are opened of which I spoke yesterday, I know as well as I know that the sun shines that the Erie canal cannot carry the freights; and I therefore propose that the Legislature may by an act specify the improvements necessary to be made, the time in which it should be accomplished, and the amount of money to be raised for the purpose, and submit it to the people for their approval; and if they approve it, that the commissioners of the canal fund shall make a loan, payable from and reimbursable out of the canal revenues. I have such faith in the canal revenues that I am willing to base it upon these revenues which I know will come. This is a fair proposition. It is simply to give to the people of this State the opportunity to authorize the Legislature to take care of the interests of the canals when it shall be conceded by all that their improvement is necessary. If we attempt to accomplish this under the fourteenth section we will be confined to a single object or purpose. The fourteenth section provides that the money to pay the interest of the debt shall be raised by taxation. The relief afforded by the fourteenth section of the article proposed by the Committee on Finance is not adequate, and it should yield to the great importance of the objects which my amendment is designed to effect.

Mr. RATHBUN—I am opposed to that amendment because I am not ready to give up the

wholesome provisions of the Constitution of 1846 in regard to getting in debt. While I am willing to allow the surplus revenues of the canals to go in that direction as fast as accumulated, I am opposed to allowing the Legislature any privilege whatever of inaugurating any new scheme of debt, except under the restrictions which are provided in the Constitution of 1846. If gentlemen will look at sections 12, 13 and 14, they will see what that whole scheme was. It is plain; it is honest; it has answered a great purpose for the last twenty years. It has enabled us to come down to this time so that we can lay our hands upon the canal debts and say that after all we have got but \$21,000,000 remaining and we have got means to pay it. I am for holding on and retaining within the control of the people by their own will, adopted and established, so that no Legislature shall be able to go beyond, or break through for any purpose whatever, except by direct permission of the people themselves. I object to this proposition because it leaves out all the checks and all the guaranties which are contained in sections 12 and 13. Section 12, which this is designed to supersede, as well as sections 12 and 13, provides this:

"Except the debts specified in the twelfth and thirteenth sections of this article, no debts shall be hereafter contracted by or on behalf of this State, unless such debt shall be authorized by a law for some single work or object to be distinctly specified therein."

If I understand the gentleman from Erie [Mr. Verplanck], he objects to that provision of the Constitution because it requires one law relating to one subject to be submitted to the people to be passed upon. That is not enough in his judgment. Why, sir, we have heard about log-rolling in the Legislature, and what does he ask of the Convention now but to leave open the principle of log-rolling in an amendment to the Constitution, in order that you may have half a dozen projects joined together and submitted at one time. For the south you have donations to their railroads, for the north you have donations for the construction of railroads and for the enlargement of canals, and in the center for the enlargement of the Erie, thus embracing so many subjects that the people are to be necessarily called upon by personal and local interests to adopt this scheme, which breaks open the flood-gates of rottenness and extravagance, with no control in the hands of the people over it whatever. I say, sir, that that section is one that should never be abandoned under any circumstances. If you have a project which is worth the contraction of a debt by the people, submit it to the people, alone, and let them determine it, and they will decide honestly. If it is a central project the south will demur and the north will demur; if it is a western project the east will demur; if it is a project that is good for the people of the State it is right and ought to be adopted, and the people will know enough to adopt it. I demur and object to any amendment of this section or any section in the Constitution of this State which will allow more than one of these projects to be submitted to the people of this State at one time, and thus combine adverse and diverse interests in the perpetra-

tion of a wrong to the whole people. I object to this amendment on that ground, and I desire that it shall be passed over on that ground until we reach these sections and take them up and consider them one by one. Then we have this amendment in direct conflict with a provision of the Constitution of 1846, and then we can determine by looking at the old and comparing it with the new, whether we are ready to abandon all the protective characteristics of the Constitution of 1846 and throw down the fence and open the field for unlimited indebtedness; because in this amendment there is a combination of objects designed to control and manage the people through activity of interested and purchased support in numerous localities.

Mr. TILDEN—I was glad to hear the voice of the gentleman from Cayuga [Mr. Rathbun]. It carries me back to the best days of the old democracy, when he and I stood together in favor of the provisions now proposed to be subverted. Sir, I concur in what has been said about the homage which is due to Clinton. My ancestors, three generations ago, were followers of the first Clinton; and no man entertains for that illustrious family more respect than I do. But, sir, when I should join in erecting a monument to De Witt Clinton on the great natural pass and gateway of travel and traffic traversed by the Erie canal, side by side, I would erect another, and that would be a monument to Silas Wright and Azariah C. Flagg. Sir, before the Erie canal was completed there was an act passed for the survey of twenty-one lateral canals in this State, of which we have constructed three—the Genesee Valley, the Chenango and the Black River—with what results to our finances we all know. Mr. Flagg came into the Legislature in 1823 and became chairman of the Canal Committee in 1824. It was the stand he took then, and the stand which Mr. Wright took in his elaborate report in 1827 which saved the State, probably, from undertaking the other eighteen, which would have swamped the State and swamped the Erie canal, and all its affluent revenues. Sir, I am ready to go with the gentleman from Erie for any improvements of the Erie canal which are practical and necessary. I am willing to take the responsibility of advocating the measure before the people whenever it shall be evident to my judgment that it is necessary. But to strike out from the present Constitution those two particular provisions which were the result of ten years of controversy to get them successfully established—the object of one being to prevent log-rolling—to prevent combinations of projects from being formed to be submitted in such a manner that they would gather together the localities and sweep themselves through by the corrupt influences they would bring to bear at a popular election; the other, that the people should be brought at the time when they vote for the contraction of a debt, to consider that they had to provide for its payment, and that they had to begin by an appropriation of money to be raised by taxation for that purpose; that these two guards should be created, and should forever stand as a means of safety and protection to the State; to strike those from the Constitution of 1846, I confess never occurred to me

as possible for this Convention to do. Sir, the very reason which my friend from Erie [Mr. Verplanck] urges against the provision of the twelfth section is the very reason which gives it value in my view, and which has given it value in the eyes of those who have agreed with me in sentiment for the last twenty-five years. It is because the restriction makes it inconvenient to have these corrupt and dangerous combinations, framed and carried into successful execution at the expense of the public treasury, and because it does require to be made an honest provision for the payment of debts at the time of their creation, that I am for adhering to this provision. If this Constitution has, otherwise, a fair chance of adoption, I think, with the little progress we have hitherto made in improving the parts of it which need improvement, if we should strike out about the only thing which induced the people to vote for it in 1846, it would fall far below what the people would expect, and would not easily secure their sanction.

Mr. ALVORD—I would call the attention of the gentleman from New York [Mr. Tilden] to the fact that the proposition on the part of the gentleman from Erie [Mr. Verplanck] is not for the commencement of any new work; it is for the improvement of the present canals of the State. Therefore so much of his argument as refers to the idea of increasing the number of canals in the State, it seems to me is entirely groundless. I would call the attention of the gentleman from Cayuga [Mr. Rathbun] to another position that he has taken, and in which my friend from Erie has fallen. I would ask the gentleman to look at the amendment of the Constitution of 1846, passed by the people under this very provision which has been spoken of in 1854. So far as the canals are concerned it was held then, and will be held now, that the canals of this State are one single object. They are nothing else, and under the provisions of the amendment of 1854, if the gentleman will read them, he will find this language:

"The Legislature shall annually, during the next four years, appropriate to the enlargement of the Erie, the Oswego, the Cayuga and Seneca canals, and to the completion of the Black River, and Genesee Valley canals, for the enlargement of the locks of the Champlain canal, whenever from dilapidation or decay it shall be necessary to rebuild them, a sum not exceeding \$2,250,000."

Taking all these canals together, one of them running through the central portion of the State, one of them from the north into the Erie canal, one of them from the west, the Black River into Erie canal, one of them again south into the Erie canal.

Mr. TILDEN—If the gentleman will allow me, I will state my view of this subject. This combination was made, not under the existing provisions of the Constitution allowing of the contraction of the debt in certain cases, but by an amendment of the Constitution. Of course it would be open hereafter to unite three or four canals by an amendment of the Constitution. But if they be submitted under the twelfth section as it is, they would have to be submitted separately.

Mr. ALVORD—I would ask the gentleman

where in the world there is any necessity of talking about the twelfth section if this can be done by the people through the Legislature, without the twelfth section standing there, of what earthly use is the twelfth section? Here was an act of the Legislature, under the fourteenth section, by means of which they sent up to the people a proposition to improve all these canals, under one single submission. It seems to me that that is an entire answer, and that the only difference there is, so far as this matter is concerned, with reference to the proposition of the gentleman from Erie [Mr. Verplanck], and the proposition as it would stand under the present Constitution, is that it does not require the interposition of two successive Legislatures. It permits one Legislature to pass upon it and then go up to the people for their action upon it. It is because of the fact that we are so thoroughly and completely impressed with the idea that there is imminence so far as regards the necessity of the improvement of these canals, that we desire that when the people shall be educated to that, when the moment shall come to show it, beyond any question of doubt, that that imminence hangs over us, we can, in the shortest possible space of time, get the opinion of the people of this State in regard to it, and go on with the necessary work for the purpose of accommodating this produce that shall come down upon us; it is for this reason, and under the Constitution as it is now, the only difference between the two propositions is that one would require two successive Legislatures, and this only requires one.

Mr. TILDEN—I would ask the gentleman whether the purpose would not be confined to one single object; whether that could not be obtained as completely under the fourteenth section as under this—

Mr. ALVORD—No, sir.

Mr. TILDEN—Whether, in point of fact, all he gets rid of is, first, the necessity of submitting the question separately, and secondly, the necessity of providing for a sinking fund from the beginning?

Mr. ALVORD—I think not. I do not agree with the gentleman from New York [Mr. Tilden]. I think it has been shown satisfactorily to all the members of this Convention, that in all human probability, judging of the future by the past, we will, without any difficulty whatever, pay the \$2,418,000, and leave an amount of between five and six hundred thousand dollars a year, and that we will pay off the entire debt in 1878. The proposition of the Canal Committee is to continue the toll. I do not believe that it is going to increase tonnage at all by decreasing tolls. We then predicate this work upon the future income from the revenues of the canals, basing our faith, as I have said, upon the future, so far as regards our energy, our patience, and our ability to perform this great work without the necessity to resort to taxation. Under the previous Constitution, in the 12th, 13th, and 14th sections, it results in this, that the Legislature can not send down to the people, any scheme of debt for their approval in any other way except by resorting to taxation. We propose to avoid that; because there is no neces-

sity—whatever our theories or opinions in regard to this matter of the canals has been—there is no necessity of our resorting to taxation for the purpose of this improvement. It is for that reason that I am in favor of this proposition, and that we urge this proposition at this time; first for the reason of doing away with the necessity of submitting it to two Legislatures; and secondly, to make it plain and clear, and unmistakable, that there is no intention to tax the people of the State directly, for the purpose of making this improvement.

Mr. HISCOCK—I confess, sir, for the reason offered by the gentleman from Cayuga [Mr. Rathbun], I had great doubts about voting for this amendment. But it seems to me that some of the objections urged by him might be obviated by amending the amendment so as to provide that this submission to the people shall be at the next annual election to be held thereafter; and in such an amendment as this I would provide for passing a law within some ten or fifteen days after this law has been passed, leaving a submission of this question to the people. Then the question can be agitated simply in those localities interested in it; to which the law as passed by the Legislature will only appeal, and give time for public discussion upon the matter. I would put something into the amendment to provide against that, therefore I offer this amendment: "That this submission shall be at the next annual election after the passage of the act."

Mr. VERPLANCK—I have no objection to that, sir. The only reason why I did not put it in that shape was that the session of the Legislature is held in the winter and spring, and the election in the fall.

Mr. LAPHAM—We have now reached a stage in this discussion, Mr. Chairman, which is to test the question, who are the true and who are the professed friends of the canals. My friend from New York [Mr. Tilden] says, that the voice of the gentleman from Cayuga [Mr. Rathbun] comes to him like a welcome sound, because it awakens in his breast the sentiments which were entertained in the year 1846. The sentiment of 1846, so far as the canals are concerned, was a sentiment of determined hostility to the canals. It was an avowed and determined purpose that nothing more should ever be done by way of improving or constructing canals; that was the sentiment of 1846; that is the sentiment which comes home to my friend from New York [Mr. Tilden] as a welcome sound. Now, sir, what was the consequence of the adoption of that sentiment in the fundamental law of 1846. As I have already had occasion to say, the result was that, in the year 1854, the people were compelled, by the tedious process of constitutional amendment, to lift the load off their shoulders, in order that we might have an advance in this great system of internal improvement. Now, what is proposed? It is proposed to go back again to that dead policy of the past. It is proposed to re-enact the absolute prohibition contained in the Constitution of 1846.

Mr. TILDEN—What clause in the Constitution does the gentleman allude to? He says that it is proposed to re-enact a dead clause of the Constitution of 1846.

Mr. LAPHAM—The sections of the Constitution referred to by the gentleman from Cayuga [Mr. Rathbun] and the gentleman from New York [Mr. Tilden], which are put into the financial article which is here proposed for our adoption, and which they say is in conflict with the proposition made by the gentleman from Erie [Mr. Verplanck]. It is, that whenever in the judgment of the Legislature, the interests of commerce and the welfare of the State demand it, the Legislature may adopt a plan for the improvement of the canals, and submit that plan to the decision of the vote of the people. And that is called "log-rolling!" I admit, in all justness, the propriety of these provisions as they apply to ordinary legislation. I admit that it is wise to prohibit the Legislature from passing bills except they are bills for a single purpose, and the object of that specified in the title of the act itself. It is essential, to preserve the purity and independence of legislation, that that provision should be contained in the Constitution. But, sir, as applied to the decision of the people themselves, upon a submission of the question directly to them, what they will do by way of changing or modifying the fundamental law, it is the first time I ever heard the argument made that the question of "log-rolling" was applicable to such a decision to be made by the people. The amendment proposed by the gentleman from Erie [Mr. Verplanck] is necessary for two reasons: it is necessary to avoid the tedious process of going through with an amendment to the Constitution, and it is necessary for the purpose of carrying down to the people, in adopting the Constitution which we are now to submit, the idea that, having resolved to continue these works as the property of the State, we mean to leave the question open—an exceptional case to the other provisions of the Constitution—for the decision of the people, without going through the process of amendment, so that they may enlarge, and expend their money upon the improvement of these works, if they desire it. I trust, sir, that the committee will have no difficulty in adopting the amendment of the gentleman from Erie [Mr. Verplanck]. I trust the vote which is to be taken upon this subject will determine who are the real friends and who are the professed friends of the canal in this Convention.

Mr. TILDEN—I was not aware that, in any remark made by the gentleman from Cayuga [Mr. Rathbun] or by myself, there was any allusion to the distinguished gentleman from Ontario [Mr. Lapham]. But, "let the galled jade wince," let him to whom the memory of "the people's resolution" incorporated in the Constitution of 1846 is an uneasy sound, reappear on the stage after an interval of twenty years, to forget all he was, and all that his associations were at that time. Sir, the gentleman entirely misrepresents me when he states that, either then, or at any time since, or now, I made any opposition to any provision for the appropriation of money to the improvement of the canals, where there was a clear or real necessity for that purpose. I made no allusion to any such provision in the remarks I had the honor to submit. I alluded simply and exclusively to the clauses of the Constitution governing the gen-

eral subject of the contraction of debt. They had nothing whatever—in the Constitution of 1846—to do with the financial provisions of that time which relates to the appropriation to be made to the canals; they are a distinct, separate, general subject. To that alone I alluded; and if the gentleman had paid attention to, or had comprehended my remarks, he would have been aware of that fact. Sir, I do not propose to enter into any personal discussion with the disciple of my old friend Albert Lester, with whom I did not always agree. He was a stricter and severer man in his views of this subject than I have ever been and perhaps his teachings may, after this interval, have led to a violent reaction in the mind of my friend from Ontario [Mr. Lapham]. Sir, I rose simply for the purpose of vindicating these general clauses of the Constitution of 1846, which I had something to do in helping to form.

Mr. LAPHAM—Will the gentleman permit me to ask him a question? Under the Constitution of 1846, could anything whatever be done by way of improving the canals?

Mr. TILDEN—Certainly.

Mr. LAPHAM—Will the gentleman point out the provision?

Mr. TILDEN—Certainly; with the greatest of pleasure.

Mr. LAPHAM—I would be happy to have the gentleman do it.

Mr. TILDEN—It could be done under the Constitution by proposing a loan for that purpose, submitting it to the vote of the people, raising the money, and applying it to the object. Certainly it was not the object of the general clauses of the Constitution of 1846 to prohibit the creation even of debt for such purposes, but to allow that creation of debt to take place only under certain guards which were deemed to be necessary to insure prudence, discrimination and reflection on the part of the people. These provisions were two: first, that each object should be submitted separately; secondly, that a sinking fund should be provided at the time of the creation of the debt, which would pay the debt in eighteen years. These two conditions fulfilled, there could have been raised five millions, ten millions, fifty millions, if the people of the State thought it necessary. That idea had its origin in this State as early as 1827 with Silas Wright, whom my friend from Ontario [Mr. Lapham] used to profess, I have no doubt sincerely, to respect and venerate. It was put into a formal shape by Mr. Loomis, in the celebrated "people's resolution." It was adopted by Mr. Hoffman and others of the committee in 1846, and incorporated in the Constitution, receiving nearly the unanimous vote of the people. Sir, there was no restraint whatever on the contracting of debts, except that these two conditions had to be complied with. The gentleman from Ontario [Mr. Lapham] entirely misconceives these provisions when he states that they operated as a total exclusion against the application of moneys for the improvement of the public works. Now, as I have said in my former remarks—

Mr. LAPHAM—Does the gentleman claim that these provisions relate to any other than debts to be created and paid by taxation?

Mr. TILDEN—You had to provide by taxation for a sinking fund; but it was a part of the scheme that the moneys so raised, if applied to an object of this description, should be refunded. Sir, as I said in my former remarks, whenever my judgment is convinced that any improvement—carefully investigated and matured—which shall require the expenditure of a larger sum of money than the surplus will form, is really and practically necessary, I am perfectly ready to support the proper measures to get that money. But what I object to is overturning, in a hasty and, as it seems to me, improvident manner, the general, permanent provisions, intended to be of universal and perpetual operation, and designed to insure a prudent and careful consideration of such questions by the people; and the substitution of a loose clause, without those guards.

Mr. FOLGER—The gentleman from Ontario [Mr. Lapham] has said, with much emphasis of manner, that the vote upon this amendment is to determine who are the real and who the pretended friends of the canal. Now, while this enunciation from him with so much force will not deter me from voting against this amendment, it at least calls upon me to state my reasons for voting against it. I do not see the necessity of the amendment of the gentleman from Erie [Mr. Verplanck], in the shape it bears. I do not see how it is to reach the end desired in any better manner than is already provided in the Constitution of 1846, and which is already provided by the thirteenth and fourteenth sections of the report of the Committee on Finance. If it is proposed to improve the canals by borrowing money, there is a just, safe way. But I do see one important, one vital, one veritable difference between the mode of the Finance Committee and the mode of this amendment, which will force me to vote against this proposition, and that is, that it authorizes the borrowing of money without at the same time providing the means of paying it again. This, I conceive, is an essential difference, a radical difference, a difference so important as to call upon us to reflect before we adopt this amendment. It is contrary to the teachings of my youth; it is contrary to the practice of my manhood. The gentleman from New York [Mr. Tilden] says that the theory of providing a sinking fund for the payment of a debt began with Silas Wright. I believe that it began sooner than that—that it began with Thomas Jefferson—

Mr. TILDEN—I will admit that.

Mr. FOLGER—He enunciated the idea that no generation had a right to bind another generation to pay the debts it never contracted. That no debt should be incurred without providing for taxation to run *pari passu* with the existence of that debt, so that the means should be all the while accumulating to pay it off. This is the difference between the amendment of the gentleman from Erie [Mr. Verplanck] and the proposition of the Finance Committee and the proposition which now obtains in the Constitution of 1846—an important, vital difference, which I hope this Convention will not so overlook, as to abandon the more appropriate provisions of the Constitution of 1846. If it is desired—if the necessity is so imminent, so imperative for the enlargement and

improvement of the Erie canal as that you can safely go the people with the hope of persuading them of that fact by your arguments, can you not, under the Constitution of 1846 obtain the means? Is there anything there, or in the article of the Finance Committee to hamper the Legislature from passing a law; is there any hamper upon the advocates of the improvement of the Erie canal or any other canal from procuring the passage of a law and submitting to the people the question whether they will for that "single, specific object" create a debt? There is nothing. But the gentleman from Erie [Mr. Verplanck] wishes them to pass upon a law to allow a loan merely, with no pledge for its repayment but the surplus revenues of the canals. We all know that it is easy to run in debt; it is easy to persuade a community or an individual, to run in debt when the leech of taxation to pay it is not at the same time applied. But when you present to them at the same moment you ask them to incur that debt, the certainty that a tax must be imposed upon them to pay it, they pause and consider; and in such case it takes more time, more work, more labor, more argument; it requires that you shall have more clearly in your own minds and be able to impress more clearly upon the minds of those whom you ask to incur the debt, the necessity of the work to be performed for which the debt is to be contracted. That is the important difference between the two propositions which is controlling in my mind. When you have existing a necessity for improvement which is so great, so apparent as to make the people willing to endure a tax to effect it, I have no objection to a law for a loan for the purpose. The gentleman from Ontario [Mr. Lapham] says there are two reasons why the amendment of the gentleman from Erie [Mr. Verplanck] should pass. One is that we may avoid the slow, tedious process of an amendment to the Constitution. Now, that is not necessary. There is no need of an amendment to the Constitution passing through two Legislatures and then finally submitted to the people, before the people can authorize an improvement to be made of the Erie canal or any other public work. The Legislature sitting in the winter may propose a law, under the provisions of the sections of the financial article to which I have alluded, which may be submitted to the people at the next general election and if they vote affirmatively upon it, the next year the tax to raise the money for the work may be laid in accordance with the law. There is no need of an amendment to the Constitution. The gentleman, it seems to me, misreads the purpose of the section of the Finance Committee and the present section of the Constitution of 1846. Nor is it necessary for the other reason that he suggested—that the adoption of this amendment will carry to the people the leading idea of this matter, that there is to be, by and by, an application to them for a debt to be created to carry on the improvement. I do not quite understand what he means by carrying to the people the leading idea that it is the purpose of this Convention, by and by, to call upon them to raise money, by borrowing, for the purpose of improving the Erie canal. I entertain, in one, no such leading idea. I am as real a

friend of the Erie canal and the other canals in this State as any other gentleman in this Convention; but I am inflexibly opposed to the creation of a debt at this time, while we are under public burdens, which—say what we may about them, talk as glowingly as we may about the enterprise and prosperity of the country and its material advancement—are great and pressing; and it becomes wise legislators, prudent and economical men, in private and in public capacities, to pause before they impose, or seek to impose, or provide means of imposing, upon the people of this State any further taxation, until they are relieved from the present burden that lies upon them. Least of all will I consent to authorize a loan, the payment of which is not provided for. If we are to improve the public works by borrowing money, we should adhere to the cardinal, democratic principle, that hand in hand with borrowing shall go the taxation which shall repay that borrowing; that the instant at which you receive a dollar to spend, that instant you shall demand from the property of the country a dollar to repay. That is the reason why I vote against this amendment; not that I am only a pretended friend of the public works of the State, but that I am a real friend of the prosperity of the State, and of the best welfare of all concerned.

Mr. RATHBUN—The gentleman from Ontario [Mr. Lapham] is entitled to credit for a great deal of zeal, for his efforts in this matter. Whether I was embraced within the remark of the gentleman as among the pretended friends of the canal I do not know; whether I was or not I do not care. I am in favor of canals, as far as anything is necessary, prudent and honest. If any gentleman outruns me in that direction, I am ready to bid him good-by when I reach the point where I stop. I am opposed to submitting this question to the people just as long as it is prudent to withhold it. Now, sir, that is a very unpopular declaration, undoubtedly, and yet it is my honest conviction that it is right. If the people of this State were all tax payers I should think differently of the question from what I do now; but, when you vote upon a question of State indebtedness it should not be forgotten that there are a great many people going to the polls to vote that do not come to the paymaster when the taxes have got to be paid. But, sir, it is a question for the people, and when it is submitted to the people I desire them to take into consideration that other little point, which is of some little importance to them—when you borrow provide for taxation to pay. Do not let us go to the people with arguments that we have heard here, that "there is no need of contracting any debt to improve this canal; the revenues will pay it all. Borrow the money and you will never need to pay a dollar; the increased revenues will pay it all." I am not afraid that the people will be imposed upon by that argument; I know better. But when you hold out the arguments of gentlemen who are ingenious, and able, and shrewd, to show how much the canal revenues are now, how soon the debt will be paid, and how excessively those revenues will increase hereafter, it is not improbable that they may be misled, and consent that where there is no risk it would not be wise to

withhold the credit of the State in borrowing money, in order to have the work done early, so that it may be done in time to meet that awful pressure which is to come from the West, so that that they will be able to get through the canal. They have been coming for twenty years, and the only place where there is any trouble is in the Syracuse lock. That seems to be the sticking point and the only one, and because there has been some delay and some trouble there, this canal must be enlarged. Then, too, the locks must be enlarged. What are you going to put into the locks when you get them two hundred and twenty-five feet long and twenty-five or twenty-six feet wide? You want these boats to correspond with the locks. And how are you going to navigate the canal with these large boats without widening the canal, and widening your aqueducts, and increasing your supply of water? And when you get through with the whole, instead of eight millions, I will be willing to guarantee that thirty millions will not do it. I am not disposed to leave the door open here. If such an amendment as is offered by the gentleman from Erie [Mr. Verplanck] should prevail, it would take the people by surprise. I propose to meet the question fairly and squarely. I say that every debt you create brings taxation, and you cannot escape it. I want the people to understand, so far as I am concerned, that when you talk about borrowing, you talk about taxation to pay it. I am a friend of the canals. I am so much a friend of the canals, that I do not intend they shall be loaded down and ruined with debt. But I am a friend of the people, also, and so much so that I do not intend they shall be cheated and deceived into undertaking a work that will involve them in an amount of taxation that they never knew or dreamed of, when they are already ground down by taxation sufficiently. The gentleman [Mr. Lapham] tells us that the provisions in the Constitution of 1846 were based upon the ground of hostility to the canals. Well, sir, he had better read it, and he will find there, in section 14, that there is no restraint upon the Legislature in regard to the borrowing of money, providing the people approve. But it carries with it an honest stamp, that has the true ring about it. If it was good then, it is good to-day, and good always. When you propose to lead them into any indebtedness, you shall carry with that proposition the declaration which belongs with it—that there is a tax following it, to pay the interest, and a tax to create a sinking fund to the end that the debt shall be paid in eighteen years. Go with that in your hands, and I have no objection. But I object to your going with a tempting bait, that is all beautiful, smooth, and tempting to the eye—no taxation anywhere. I say it is not honest, in my judgment. I do not mean that the gentlemen who propose it are not honest, but they are mistaken, and it will operate as a fraud upon the people, if they are unwise enough to adopt it. Gentlemen remark about my using the phrase “log-rolling.” If I recollect the amendment of the gentleman from Erie [Mr. Verplanck], it provides that the Legislature may provide for the improvement of the

canals, or any one of them, and, having done so, submit it to the people to be ratified. Nothing about taxation; nothing about payment; carrying the idea upon the face of it of an indorsement by this Convention of one hundred and sixty men, elected upon the theory that they knew something; indorsed by this Convention as a proposition safe for the people, because it does not involve taxation. I will give no such indorsement. If other gentlemen desire to do it, they may. But I used the term “log-rolling.” It seemed to be unpleasant to the gentleman from Erie [Mr. Verplanck] and the gentleman from Ontario [Mr. Lapham]. Now, what is “log-rolling?” A combination of half a dozen schemes in the Legislature, depending upon that combination in order to pass any of them. Is not that called “log-rolling?” Now, what says the Constitution of 1846? That we should take one proposition, or single object, and submit it on its merits. There is no “log-rolling” about that, sir. What is the proposition now? You may take all the canals, and propose an improvement in each and every one of them; and if that is not enough, throw in a few railroads to finish up with, and go to the people for their approbation, without a hint at taxation and without an assumption that a debt is to be contracted. That is the proposition. Now, sir, is not that “log-rolling?” The Erie canal will catch the center, the Chenango canal extension, seeking coal on the Pennsylvania line, bringing its claims to a portion as long as the money lasts. That must be finished and enlarged. And the Black River canal, that we have heard spoken of here, must be enlarged, the Genesee Valley, the Champlain and the Chemung canals also. But I need not repeat all the names of these canals that will come here to be provided for in the bill, all appealing to the people, each in its neighborhood, saying to the people: Look! you are to have a million or two expended on this canal; it will help the people. So, sir, it will be in every locality; the argument will be “we are going to make money out of it; and it is not going to cost anything. Don't you see the revenue pouring in upon us?” My friend from Onondaga [Mr. Alvord] and my friend from Ontario [Mr. Lapham] know how this matter is. They tell you it will not require a dollar of taxation; it is, a magnificent scheme: and all we have to do is to let the thing run, and we will have canals without limitation, without money and without price, and without bottom; until we get in neck and heels. Then the question arises. How are we to pay? It would be a “stop and pay up” policy, and then, twenty years afterward, we will be told that the people were unwise, because they stopped in the midst of a mad career and lost millions; when in truth they were compelled to stop and to pay up and thereby saved millions. I am not ready to condemn that scheme of stopping and paying as was done in 1846. I have heard it condemned here a hundred times; but I have yet to learn that after all, there was not wisdom and honesty in it. At all events, I am not prepared to follow any such scheme as this now under consideration anywhere, whatever others may do.

Mr. BICKFORD—Will the gentleman from

Cayuga [Mr. Rathbun] allow me for a moment. The stop law which he alludes to, took place in 1842 and that was before this revision of the Constitution of 1846.

Mr. RATHBUN—I am happy to be examined upon such questions because it helps me a little sometimes. In 1842, when the magnificent scheme to spend forty millions of dollars without much regard to the question where it came from or where it went to, was under full and mad career, the people of the State became alarmed—a majority of them were wise and discreet, and laid their hands upon the work and arrested it. In 1846, the representatives of the same people came together to make a Constitution, and with the experience of 1842 before them, with knowledge gained and experience learned at their cost and suffering and taxation, they laid their hands upon this power to contract debts arrested it and put safeguards in the Constitution of 1846 which I ask and insist shall be put in the Constitution of 1867. I ask any man in this Convention to tell me when and where the power has been taken from the people to do anything they please, upon the terms and conditions named in section 12 of the Constitution of 1846. Do not wipe out any part of that and leave it so that we may be misled and cheated again, into extravagance and folly. If you try the experiment to-day you will fail. I know something about the people of whom the gentlemen speak, and I have known them almost as long as most any member of this Convention, and I have been about as familiar with them as any one and I know of whom they are composed, as well as any of them, and I tell you that they have more sense a good deal than seems to be supposed, in the proposition now before this Convention. If they were here to speak with their own mouths they would spurn the whole thing as a mere bait to lure to debt, taxation, disaster, and ultimate disgrace.

Mr. VAN CAMPEN—I make no apology for rising to speak upon this proposition. I am opposed to the amendment of the gentleman from Erie [Mr. Verplanck]. I am not opposed to it because I am an enemy of the canals; I am opposed to it because I am a friend of the canals; I reside upon one of those much abused and cheated canals; I am in favor of improving the canals and I shall be in favor of enlarging the Erie canal, though I do not believe that it is immediately demanded. The Erie canal has been declining in its local freight for those years past. The freights applied to it by the State of New York have been declining. The time is not far distant when these three branch canals on the south side of the Erie canal will be more valuable so far as the State of New York is concerned, than the Erie canal itself is. Those three canals reach up to the coal mountains of Pennsylvania, and for all time and for generations to come, so long as water runs, they are to be the means by which the fuel is to be brought from those mountains to the interior of the State of New York, to warm your firesides, heat your furnaces and make steam for your manufactories. The Genesee Valley canal cost originally \$5,000,000; not very well made at that. It has not paid its expenses, and the reason is not because the work has not the means of paying;

it is not because there is no immense forest of timber and lumber standing there; it is not because there is no coal to be furnished there, but it is because it has not been well made and never has been managed at all, only to get as large appropriations and do as little work for them as possible. I ask if it is wise to incorporate a provision in this Constitution by which we shall launch out into a system of improvement without first going through with precautionary measures, and making such investigations as shall carry proof to the people that these improvements are necessary; that the extent of those improvements are known; that the amount of money required for them shall be known, and that the means for the payment of those improvements shall be provided for. When those things are done; when the people can examine these questions, and are satisfied that the immediate or the prospective wants demand these improvements they will furnish the means and authorize the improvements. But I grant you they will not be satisfied to authorize them unless you at the same time provide for the payment of the interest of those expenditures and the ultimate payment of the money under the credit of the State. I am in favor generally of the provisions of the Finance Committee on that subject. If the people can become satisfied that those enlargements are necessary, they will furnish the means to make them, and there is no doubt on that subject at all.

Mr. MURPHY—I am constrained to vote against the amendment of the gentleman from Erie [Mr. Verplanck] for reasons which I will state. In the first place because it only transfers from this body to the Legislature the creation of further indebtedness on the part of the State for the enlargement of the canals. The sense of this Convention has already been shown to be hostile to this proposition as it originally came from the Committee on Canals. The amendment, in contravention of this determination, ingeniously sends the matter to the Legislature and authorizes it to pass a law by which the question may be submitted to the people to have the debt created. It appears to me, sir, that the position taken by the gentleman from Ontario [Mr. Folger] is sound and impregnable. I am in favor, in all these matters, of a separate submission to the people, or a submission of the work separately. I believe it to be a sound principle, because in such case you obtain explicitly the judgment of the people on the particular work. But combine the several works and you have this log-rolling which has excited so much the apprehensions of gentlemen and which it is the province of this Convention, if possible, to prevent. With a single question, or a single work before the people for them to decide upon, you will secure their unbiased judgment everywhere, except perhaps in the particular locality where the work may be contemplated to be prosecuted, and the influence then, so far as it may affect the result, will be so small, that it will be of little importance. I am not afraid of what appears to be a difficulty in the mind of my friend from Cayuga [Mr. Rathbun]. I think we may trust the subject to the whole electoral body, non-tax payers as well as tax payers. I do not agree with those who think that

such questions merely concern those who pays the taxes directly. Every householder, every man who has a family, has an interest in them that will lead him to a safe conclusion, quite as much so as those who pay the taxes directly. Sir, I am a friend of the canals, and am not fearful of being put in the category of an enemy of them. In favoring this amendment it is because I wish to see the time arrive when we shall have as free a commerce as possible upon the canals, as we may have when they will not be taxed for the payment of interest. I would have them as free as the ocean stream, but that cannot be. We must provide for the superintendence and maintenance and repairs of the canals. To that extent there is a necessity; beyond that every true friend of the canals must be anxious there shall be no further burden upon them. If experience shall show, after the operations of a few years, that enlargement is necessary, that it will contribute to the commerce of the State, that it will be for the benefit of the whole people and the prosperity of all, then let us, when that time shall have arrived have the power to determine the question and submit it to the people in the form provided already in the present Constitution and as proposed to be continued in this one. Let us secure their unbiased judgment upon the enlargement, adhering, however, to the democratic doctrine—not democratic, but financial doctrine—of providing at the same time for the repayment of the loan at a given time; and then, sir, we shall have done all that appears to me to be right and proper.

Mr. McDONALD—I wish to offer the following amendment:

But the Legislature shall by such law provide for the payment of any balance of interest or principal, over and above the proceeds of the canal revenue, pledged for the payment of such loan, within eighteen years from the time of the contracting thereof.

Mr. MURPHY—I have looked carefully at the amendment of the gentleman from Erie [Mr. Verplanck], and I find there is no provision for the payment of interest. It provides that a debt shall be contracted, reimbursable out of the revenues of the canals. Suppose, under the operation of his amendment, if it should be adopted, the Legislature should authorize the creation of a loan, how is interest to be paid? It cannot be paid out of the revenues, because we have already, by the provisions we have adopted, disposed of all those revenues until 1878. How, then, I repeat, is this interest to be paid otherwise than by taxation? There is no other way.

Mr. VERPLANCK—I do not hope to get a vote of the people of this State to authorize any act which the Legislature might pass until experience shall have proved that the canal revenues can be relied on and that the people are not to be taxed. This has been argued as a proposition to tax the people of the State for the benefit of the canals. I never dreamed of any such thing; that is the very thing I wish to avoid. When the people shall see that the revenues of the canals will be amply sufficient for purposes of this kind I believe they will allow the canals to be improved.

Mr. MURPHY—Suppose the Legislature should pass an act authorizing this loan next year, would not interest thereon have to be paid until 1878?

Mr. VERPLANCK—If there is any difficulty about that it can be very easily provided for by amendment.

Mr. MURPHY—Then let us have the amendment; let us have the whole proposition.

Mr. McDONALD—The amendment which I have just proposed, if I do not mistake, furnishes the remedy which the gentleman from Kings [Mr. Murphy] wishes. It seems to me that this amendment now offered is the natural result of the long discussion we have had in this body. What was that discussion? The first discussion was with regard to the great indebtedness of the State, and whether we ought to venture upon a further indebtedness. But the great point, and the one on which the decision of this Convention turned, was the doubt in the minds of a great many men here as to the necessity, at this time, or in the immediate future, to enlarge any of the canals. That was the reason why the Committee on Canals found it wise to leave out that portion of their scheme which bound this Convention to the policy of entering upon enlargement next year, and to the necessary creation of a debt. On account of that doubt, we are left now to determine what is best to be done in regard to taxation. I think members of this Convention are no more tender upon that point than the people of the State. The people of the State, as well as the members of this Convention, know what taxation is upon them, what burdens they have to bear, even if it is not printed on the face of the Constitution, as it was proposed to be done by the Committee on Finance. They understand their liabilities, and they know they have got to meet them; they are tender enough on these subjects as any one will see, if he makes any inquiries with regard to them. But gentlemen say that section 14 provides a remedy. Let us see. Section 14 provides, first, that every debt must be for a single specified object. Now, with regard to whether a provision for the enlargement of more than one canal may be a single specified object, I find that two persons of very distinguished ability differ here. If the gentleman from New York [Mr. Tilden] was right, then there could be no amendment or no provision under this clause, without providing for each separate canal. If it was found necessary to enlarge the Erie canal, that must be provided for by one law, and if it was found necessary to enlarge the Champlain canal, that must be by another law, and so on to the end, with regard to whatever enlargement or improvement was necessary upon each canal of the State. What would be the effect of this? The gentleman from Cayuga [Mr. Rathbun] talks about log-rolling. Now, what I understand, by log-rolling is this: when there are several bills, and a man says: "I will go for your bill, if you will go for mine." Here we propose to have it all in one bill, and the gentleman says that is log-rolling. Let us see what the effect would be. Let us see how the friends of the canals would be affected thereby. A law is proposed for the advantage of

the Erie canal, and the friends of the other canals say: I do not wish to be taxed for the Erie canal; a friend of the Cayuga and Seneca says, I have no shares of that stock, it will not benefit me any; we need it just as much as the Erie canal does, and it is just as important to the people that we should have it as well as the Erie canal, and therefore I will not help the Erie canal if I don't get it myself. The friend of the Oswego canal says the same thing; the friends of the Chemung and the friends of the Champlain say the same thing. Therefore by this very argument you put the friends of canals against themselves and you put the friends of canals where they cannot aid each other. The very thing reported by this committee, is that these canals must stand or fall as a system. You have tied to the Erie, and other paying canals these non-paying side canals, which are eating out the very vitals, so far as the revenues are concerned. They say the whole thing must be a system. Hence, they want a system of improvement to go before the people which shall tie them up together so that the friends of the canals can aid one another. I said that provision should be allowed to obviate that objection, so that the proposition can be presented to the people according to law, each canal with the amount provided for each, and all the particulars so that the people will see and know just exactly what is provided, and the fact that the people of the State adopt it, will not be log-rolling, or have any of the evil effects of log-rolling. On the contrary it will simplify the system you have enacted here and bound up together. Then this law provides that the debt shall not be contracted, unless the whole debt, principal and interest shall be provided for by taxation. That entirely hinders the very object the friends of the canals are trying to effect. They propose to make a loan on the basis of pledging the revenues of the canals. That they cannot do according to this law, because they must provide for the whole debt by taxation, therefore the pledge would amount to nothing at all. By the amendment I have offered, all the evils gentlemen have cried out against here—that the people do not at the same time they contract the debt provide for its payment—are avoided. It provides that the law submitted must provide that the principal and interest shall be paid within fifteen years. Therefore I think the objection raised by gentlemen here—that the debt should be provided for, is avoided and the canals get this benefit. That is all we ask for. The idea is this: that the canals, being a system, should be enabled to pledge the revenues of that system to paying for any indebtedness which the people of the State shall think it necessary to lay out upon them for improvement—that the people of the State may mortgage the revenues of the canals to pay the money to be laid out upon them. Then comes the clause that if the mortgage security fails they must pay the balance, and that furnishes all the remedy gentlemen can wish. I think I have shown that under section 14 it would be impossible even to enlarge the canals, except by an amendment to the Constitution, and that is a thing I suppose the people have a right to do at any time. All we ask is, that the canals, being

the property of the people and being different from any other property, when the State contracts a debt for the canals it may pledge the entire revenues, and thus that the constitutional law shall be so altered that the canals shall have the same benefits as any other property.

Mr. LAPHAM—I regret that anything which has fallen from me on this subject should have induced my honorable friend from New York [Mr. Tilden] to infer that I had any intention to allude to him personally. I will not reply to what the gentleman has seen fit to say in reference to my position now, as compared with the position I may have occupied in years past, by adverting to the points of departure, in the position of the gentleman, from that which he occupied in 1846. My bill of indictment against him would, I apprehend, be quite as severe as any he can bring against me. But here is not the place to try questions of this description. That gentleman, in his place this morning, said he thought in many respects the Convention of 1846 was in error, but in this respect he regarded it as having been eminently right. I have suggested that in respect to the policy to be pursued toward the canals, I thought the Convention of 1846 was in error, and for pointing out that error I have ceased to be a follower of the faith of Silas Wright, or a disciple of Lester. I do think that the Convention of 1846, in omitting to make any provisions by which this vast property could be taken care of, committed a great mistake; and I think if we incorporate into the fundamental law, to be submitted to the people, a resolve that we keep this as State property and make no provision for preserving or improving it, we shall also make a great mistake. The sections of the Constitution of 1846, to which he refers, are sections to provide for loaning money, which is to be repaid by taxation, and he referred to those clauses alone, to which this is an exceptional case. We have here a vast property, bringing in a largely increasing revenue; we have just decided that, beyond paying the existing debt of the State, every dollar of that revenue shall be kept in the treasury for the purposes of the canals. Now, what do we propose? We propose to authorize the Legislature to submit to the people a law by which the receipt of those revenues from the canals shall be anticipated by a loan, payable out of those revenues—not payable by taxation—whenever improvements are required, provided the same shall become necessary before the revenues shall have accrued. Therefore the case forms an exception to the general policy of creating a debt, for new objects or new works. It is a prudential provision, by which the people may protect and take care of this vast property.

Mr. FOLGER—Suppose the revenues should not be sufficient to pay the amount?

Mr. LAPHAM—Then let them provide for the remainder by taxation.

Mr. FOLGER—Why not begin at that end?

Mr. LAPHAM—What end?

Mr. FOLGER—That the amount shall be raised by taxation.

Mr. LAPHAM—We provide that the Legislature shall submit a law to the people, and unless in that law they provide for the payment of in-

to rest, and for the payment of any deficiency, in case the revenues are not sufficient, of course the people will reject the law. Gentlemen are apprehensive that the Legislature will frame a law without the proper provisions. That is all there is of this. Unless the law provides, and provides properly for all these contingencies, of course the people will not adopt it; nor will the Legislature enact a law without putting in the proper provisions upon that subject. I ask again, if we are to take this property and hold it as our own, should we tie up our hands, against doing anything with it, except upon the condition upon which we would enter into new debts for new objects. There is a manifest and obvious reason why, in providing for this single subject of the care and management of the public works, they should be made an exception to the ordinary objects for which a debt may be created, or for which the creation of a debt may be prohibited. The amendment of the gentleman from Erie [Mr. Verplanck] authorizes the framing of an act by the Legislature, and a submission of it to the people, and provides, in case it is adopted by the people, it shall be carried into effect. Many gentlemen have said, during this protracted discussion, that they were in favor of the submission of this question to the people, in view of the fact that there was some uncertainty about the necessity of this improvement, and that a submission of the decision to the people would be acceptable. The friends of the canals are in favor of submitting the question to the people, thus following out the suggestions of these gentlemen, and with that view this amendment has been proposed by the gentleman from Erie [Mr. Verplanck].

Mr. ALVORD—I would call the attention of gentlemen, members of this Convention, to the amendment to the Constitution of 1846, made in 1854. It became necessary, as a matter of course, under the provisions of the Constitution of 1846, as they existed, that an amendment should be made to the Constitution, in order to reach the difficulty which obtained at that time, and which stares us now in the face, of otherwise appropriating the revenues of the canals for the purposes of making any improvement upon them, except by taxation upon the people. So that when they went to work in 1854, they amended the Constitution in that regard, and for that specific purpose; and if gentlemen will look at this amendment, they will see that it reads in this way—that after paying the said expenses, etc., there shall be appropriated and set apart, in each fiscal year, in addition to the surplus revenues of the canals, as a sinking fund, a sum sufficient to pay the interest as it falls due, and to extinguish the principal within eighteen years, of the entire loan made under this section. Nothing whatever is said about taxation, and no reference made to taxation; but, for the purpose of enabling the loan to be made upon the faith and credit of the revenues to be derived from the canals, they provide for submitting it to two successive Legislatures and then to the people; and in order to avoid this fourteenth section, which is now under consideration, they went on and authorized a loan of \$2,250,000 a year for four years for specific purposes. There is \$1,500,000 for canal certificates

as they are termed; both in this same article, and both of them, as far as regards their payment, to be reimbursed out of the revenues of the canals. Not one word is said about taxation in reference to this matter. And the only difference between this amendment to the Constitution of 1846 and the proposition of the gentleman from Erie is, that there need not be two Legislatures intervening; that one may do it instead of two. We can arrive at this same result; there is no sort of question about it, under the Constitution as it now exists, and as it would exist, providing this article were in it, by submitting the question to two Legislatures and then to the people, and to predicate the payment of the debt which would be created for the purpose of this improvement, upon the revenues arising from the canals, with the alternative, if those were not sufficient, then to fall back upon the people by taxation. It seems to me that is all there is of this section. It is simply whether we will or not permit one Legislature to pass upon this matter and submit it to the people, or whether we shall be compelled in the future to submit the question to two Legislatures and then to the people, to make it a part of the organic law, or a quasi-organic law, passed by the Legislature and approved by the people.

Mr. VERPLANCK—The terms with which the gentleman from Cayuga [Mr. Rathbun] and some other gentlemen choose to characterize the amendment I have offered, I cannot quarrel with. That is a matter of taste. I have offered the amendment honestly, and although in the opinion of many members of this committee, something has been done for the canals by the first amendment I proposed, and which has been adopted, yet I believe very little has been done for the canals. I do not propose to say who are the friends of the canals or who are its enemies. I propose to leave that question to the people, and I assure gentlemen upon this floor the people cannot be deceived upon this subject. They know, particularly in those localities where interest is felt upon this subject, without being told by me or any other gentleman, who are the friends of the canals. I want to be entirely frank upon this subject. I offered this amendment, because I did not suppose, that if an exigency should arise, rendering it necessary to make any important canal improvement; we could go to the people and ask them to approve of a law, proposed by the Legislature to carry out that improvement, if the people at the same time were to provide, they should be taxed to pay the interest, and taxed to create a sinking fund to pay the principal of the cost of such improvement. I have not been guilty, and would not be guilty, of any such folly. Gentlemen talk to us about the Constitution of 1846. Why, sir, what was the Constitution of 1846, so far as regards the canal policy. Before ten years had elapsed, to save the canals from utter destruction and ruin, the Legislature was obliged to go to the people, and the people sanctioned a scheme by which the money was raised for the canals, and the credit of the State saved. I do not believe all the wisdom of the world, or of the State was concentrated in the Convention of 1846. There were many men in that Convention for whom I enter-

tain, and have always entertained the deepest reverence, and for the general teachings of that Convention I entertain the deepest reverence. I have always been opposed to unnecessary taxation and unnecessary debt, but I never was afraid to trust the people, even upon the subject of debt. The amendment which I have had the honor to propose, does not propose to add one dollar to the debt of the State, then why not trust the people. It was supposed that De Witt Clinton had made a reputation which would live as long as time would last in connection with the canal system. To-day the canals are beggars at your feet, and if the views of some of the members of this Convention could be carried out, they would be sold to-morrow or filled up. And yet it has been supposed that imperishable fame had been reaped from a subject, which, in less than fifty years, has come to be characterized as useless, and not entitled to favorable consideration by the people or by the Convention. We have not reached in this discussion statesmanlike views of this subject. Gentlemen talk about taxation of the people, when the taxation will not come. We know there will no injury to that class of people who are subject to taxation—you will have no trouble there. Your trouble in this country, will be with labor, and laborers of the country, who, although not appearing on your tax rolls, pay on the necessities of life, an undue proportion of taxation. They must have employment—sufficient employment at remunerative rates. I tell this Convention, that the great question in this country, is the rights of labor. You have your iron mines at Lake Superior and at various other portions of the country. The ore in these mines is valueless as it lies there. It is only when brought in contact with labor that it gains any importance in these beds.

The hour of two o'clock having arrived, the PRESIDENT resumed the chair, and the Convention took a recess until seven o'clock.

EVENING SESSION.

The Convention re-assembled at half-past seven o'clock P. M.

Mr. MATTICE—I ask leave of absence for to-morrow.

There being no objection, leave was granted.

Mr. TAPPEN—I ask leave of absence for Saturday morning and Monday evening.

There being no objection, leave was granted.

Mr. COCHRAN—I ask leave of absence for Monday, Tuesday and Wednesday of next week.

There being no objection, leave was granted.

Mr. LAPHAM—I ask leave of absence for Monday and Tuesday.

There being no objection, leave was granted.

Mr. CASE—I ask leave of absence for Monday evening.

There being no objection, leave was granted.

Mr. E. BROOKS—I ask leave of absence for to-morrow's session.

There being no objection, leave was granted.

Mr. BOWEN—I ask leave of absence for next week.

There being no objection, leave was granted.

The Convention resolved itself into Committee of the Whole on the reports of the Committees

on Finance and on Canals, Mr. SHERMAN in the chair.

The CHAIRMAN stated the pending question to be upon the amendment offered by Mr. McDonald to the amendment offered by Mr. Verplanck.

Mr. VERPLANCK—When I was suddenly interrupted by the hammer at the recess I was suggesting that in carrying on our public works we owed a duty to labor as well as to capital, and that our public works, in addition to furnishing employment to thousands of our laborers, directly benefited that class of our citizens by the impetus which they gave to the development of our mines and the conversion of our forests, and that the amount of employment depended very much upon the carrying trade which we furnish. My time will not allow me to pursue this subject. When I offered my amendment, Mr. Chairman, I thought that possibly within the next twenty years, and when we get through the channels of Illinois, Wisconsin and Minnesota, to which I alluded last evening, and our contributions from the Pacific railroad, which I suppose will be furnished within the next five years, added to the cereals of the great West and the products of our own forests and mines of coal and iron, the people of this State might be satisfied that we had not sufficient canal carrying capacity. And if they should come to that conclusion there are but two modes of reaching the case—the one by an act to be submitted to the people as provided by the Constitution of 1846; the other by a constitutional amendment. The provision of 1846 would not answer the purpose, because that provision requires that the act authorizing the loan of money shall provide for the payment of the interest and ultimately of the principal by taxation in the act itself. I do not propose, as I before stated, to ask the people of the State to pay either the interest or the principal of the sum that might be necessary to improve the canals. What I hoped was that by the time that the Legislature and the people would move in this matter, the revenues of the canals would have justified the predictions of gentlemen on this floor in reference to their amount, so as to satisfy the Legislature and the people that they could properly rely upon them as the basis of a loan. I do not think the provision of the Constitution of 1846 would answer, for another reason. That confines the work to be done under the act to a single work. It has been said that the object is to prevent "log-rolling." While I admit, Mr. Chairman, that my amendment is open to that objection so far as the action of the Legislature is concerned, who ever heard of "log-rolling" with the people? What effect upon the people of this State would the localities interested in these railroads have? My amendment proposes that the Legislature, after passing the act, shall submit it to the people for their approval. I am not afraid of the people; the people are intelligent; the people will understand whether the proposition of the Legislature is for the interests of the State. The other mode is by constitutional amendment. My objection to that is, that in the first place it breaks into the Constitution unnecessarily. If there should be a

necessity within the next twenty years for relief in regard to this matter, why not provide for it now and here, instead of awaiting the slow process of constitutional amendment? By the amendment that we have adopted, we have given to the Legislature the canal revenues for canal purposes, after the amount for which they are pledged is provided for. I desire by my amendment to provide, in addition, that when the Legislature may think it important, and the people shall agree with the Legislature, the commissioners of the canal fund shall have power to provide for the work. Now it is a fair proposition; and this committee should not hesitate to adopt it. The other provisions which we have got are inadequate, in the opinion of men best informed upon the subject. I know that without the adoption of this amendment very little has been done by this Convention for the interests of the canal.

MR. OPDYKE—I object to the amendment of the gentleman from Erie [Mr. Verplanck], first, because I regard it as out of place, and out of time. If it be made a part of the Constitution at all, I think it should come in at the end of the financial article; or else it should be so modified as to be made a substitute for the fourth, fifth, and sixth sections of the article reported by the Finance Committee. These three sections have not yet been considered and decided upon by this committee, and until that has been done even the friends of the amendment cannot determine what precise form it should take. But, sir, I object to this amendment in any form. I regard it as improper and unnecessary. The fourteenth section of the article reported by the Finance Committee, which is taken *verbatim* from the present Constitution, provides a mode by which the funds can be raised for the enlargement of the canals in a little over twelve months, including the time required for obtaining the people's sanction, as was so clearly shown by the gentleman from Ontario [Mr. Folger] this morning. By that method, the people would have little more than six months to consider the merits of the proposition, and to decide whether or not it would be wise in them to adopt it. That time is certainly short enough. It seems to me that that is the precise form in which the question should be submitted to the people for their deliberation, accompanied by the bill of costs, which confronts them, with a fair presentation of what the enlargement would cost, and at the same time admonishes them that that cost would add to their taxation. For one, I am in favor of the enlargement of the canal whenever its necessity shall be demonstrated. I have no doubt the majority of the people of this State are in favor of it whenever that necessity shall be demonstrated. The Committee on Canals, who reported in favor of a project for the Erie canal enlargement, failed, I am satisfied, to convince a majority of this Convention that that time had arrived. I suppose from the indications we have had to-day, that they themselves have abandoned the intention of asking this Convention to adopt their plan of enlargement—a plan which I think the gentleman from Onondaga [Mr. Andrews], in his speech some days ago, demonstrated to be as faulty as it is unnecessary. In

the first place, he showed by official statistics that one of the most difficult locks on the whole line, the lock at Syracuse, had never received business enough to test its full capacity; and he demonstrated clearly to my mind, another still more important fact, which was this: that the plan proposed by that committee of removing the double locks and substituting single locks of larger capacity, could not fail, in practice, to diminish and not increase the capacity of the Erie canal. But, sir, the earnest friends of the enlargement, I think, from intimations that have fallen from them in the course of the debate on this amendment, specially desire to avoid meeting the people with their plan and the bill of costs under the fourteenth section of the article reported by the Finance Committee. They prefer that the people should not realize the fact directly that it would increase the taxation, and therefore, as intimated by the gentleman from Onondaga [Mr. Alvord], they would prefer as an alternative, the plan adopted in 1854 by an amendment of the Constitution, although it takes a longer period. He objects to that longer time. I object to the change of plan proposed by the gentleman from Erie [Mr. Verplanck]. I think the plan provided in the fourteenth section is precisely the true one. And, sir, I object to the change on another ground. It proposes to pledge, as I understand it—for I heard the amendment read but once, and then but very indistinctly—all the revenues of the canals that shall remain after the canal debts are paid, until there shall be obtained from that source sufficient funds for the enlargement. The three sections of the Finance Committee's report, to which I have referred, make provision for a different disposition of those funds. That committee regarded them, under the pledges of the present Constitution, as belonging to the general fund—in other words, to the people. Being conscious of the present onerous degree of taxation, they endeavored to devise a plan whereby those funds might be made available in the reduction of the taxes of the people of this State. The sixth section of that article provides for the conversion of the bounty debt into a stock maturing in 1885, extending it for a period of eight years, with the express design of bringing in these \$18,000,000 to pay a portion of that debt and to release the people of this State from taxation to that extent. This conversion and extension of the bounty debt would diminish the annual requirements of the sinking fund for its payment about \$3,000,000, and thus, at once, diminish taxation to that extent. It strikes me that this is a plan that the people would approve, to have those revenues which really belong to them—which are pledged to them by the Constitution, made available at once to the reduction of their taxes; and whenever they shall be convinced that it is necessary to enlarge the canals they will be prepared to sanction it in the face of the taxation involved. A single word in regard to the taxation of the people of this State. The Finance Committee made an estimate embracing all the taxes to which they are subjected, amounting to \$180,000,000. That estimate I believe has not been directly controverted. Some gentlemen have intimated that they believe the estimate must be

too high. Since it was made, I entered into a more careful analysis of the elements from which it was derived, and I find in one or two respects it is too low, and in none have I discovered that it is too high. The estimate is, for the year 1866, direct taxation by the State, \$12,800,000; counties and towns, \$32,000,000; cities and villages estimated at \$18,000,000. Of that I have no specific data, but I believe it to be under the mark. The amount of internal revenue paid to the general government by the people of this State was upward of \$75,000,000. The committee estimated it at \$62,000,000. They made that abatement for the reason that they supposed there were excise taxes paid on manufactures and on the sale of manufactures that were produced in other States and consumed in other States, on which the people of this State did not really pay the taxes. That is unquestionably true to whatever extent this class of taxes may go. I have examined the returns with some care, and am satisfied that we have made too large an allowance. My estimate is that, instead of taking off \$13,000,000, we should have taken off about half that amount. I have in my hand the official report of the taxes received at the bureau of internal revenue during the year 1866. I have looked over the items, and I find the legitimate taxes that are directly paid by the citizens of this State, and for which they receive no remuneration outside of the State, must amount, in my judgment, to about sixty-seven or sixty-eight millions. Then, sir, we have estimated our share of the taxes paid for duties on imports, reduced to currency, at \$56,000,000. In this estimate we assume as the share of this State one-fifth of the whole amount received by the government. Whether that be too large or too small, I am unable to say with confidence, but I believe it to be too small. It is well known that this State is among the most prosperous States of the Union, and that the city of New York, from its large wealth, is the most liberal consumer of all the luxuries imported into this country, on which the highest duties are paid. From this it will be seen that the people of this State pay a much larger share of this class of taxes than the population of the State would imply. Therefore our estimate, which is one-fifth of the whole, is certainly not too large, but more likely too small. But this is not all. These duties involve higher taxation than the amount actually paid to the government. It is well known that the importer in estimating the cost of his goods embraces the duty as well as the foreign cost; he charges his profit on the whole; so does the jobber; so does the retailer; and the consequence is that, before these goods reach the people they are covered with probably fifty per cent charges in addition to what the government actually receives. Such is the expensive method of raising revenues by means of duties on imports. From my practical knowledge on this subject, as well as from careful estimates, I am satisfied that the expenses of collection and the charges referred to, amount to not less than fifty per cent on the net amount received by the government. These charges are paid by the consumers of im-

ported goods, and the people are thus compelled to pay in the form of indirect taxation one dollar and a half for every dollar the government receives. If we should include this it would add about \$28,000,000 to the taxes paid by the people of this State. Nor is this all. In addition to the cost of collecting these taxes, the consumers have to pay much higher prices for the articles manufactured at home, that are protected by these high duties. In 1846 the then Secretary of Treasury, when our foreign commerce was less than one-third of what it is to-day, estimated that the people of the United States paid tribute in that way, by increased prices for manufactured goods produced at home, in consequence of the protection they received from duties paid on imports, not less than \$100,000,000 annually. I will not include any portion of that; I only wish to demonstrate that \$180,000,000 is a very low estimate of the aggregate annual taxes paid by the people of this State. Nor does it embrace voluntary taxation to which the people of this State subject themselves; such, for example, as the support of churches and charitable institutions; the relief of the poor and the distressed, and a thousand other things, which together amount to a very large sum.

Mr. M. H. LAWRENCE—I would like to ask the gentleman a question. Does he claim that the imposition of these duties on foreign articles has tended to injure the industrial interest of the country?

Mr. OPDYKE—I do not understand the gentleman.

Mr. M. H. LAWRENCE—Does he claim that the imposition of these duties has worked an injury to the country?

Mr. OPDYKE—If that question were under discussion, I should answer it very promptly in the affirmative, but it is not under discussion at this time. I was simply pointing out the amount of taxation to which we are subjected. But, sir, my time is nearly up, and I desire, for a few minutes, to notice some remarks made yesterday by the honorable gentleman from Oneida [Mr. T. W. Dwight], and by the honorable gentleman from Erie [Mr. Clinton]. The gentleman from Oneida deprecated the manner in which the merchants of New York had been represented on this floor, and I regretted to find the gentleman from Erie still harsher in his criticism. I thought he spoke with a degree of harshness which the occasion did not call for; but from the high esteem in which I hold that gentleman I cheerfully overlook it, and have no other feeling than kindness toward him. I suppose the remark which elicited the criticisms was an unstudied phrase or two used by me in debate with regard to the judgment which influenced the merchants of New York in deciding questions affecting commerce. I suppose it was the phrase that they looked to the effects of such measures on their profit and loss account, to see on which side of the ledger they would produce the larger entries. That may be an unfortunate phrase; but it is precisely of the same import as if I had said they looked to their effects on commerce. It is merchants who prosecute commerce; it is the en-

largement of commerce that enlarges their commissions, and consequently their profits. There is no difference in the import of the two phrases. The choice of words may have been an unfortunate one, but they have precisely the same import, as "the effect on commerce." That is a question which merchants of all others are best qualified to decide accurately. I regret as much as either of those gentlemen that the merchants of New York have not on this floor one of their own class better qualified to represent them. I feel my own deficiency, especially in debate. But, sir, I rejoice that they have not deputed either of those gentlemen to speak their sentiments and represent their wishes in this Convention on questions affecting commerce, for I feel that they would then be much less likely to have their wishes and interests truly represented. I intend to be entirely respectful; but I must speak plainly and therefore must say that the remarks of both of these gentlemen, in their arguments touching the commercial aspects of the question before us, manifest a total absence of knowledge as to the nature of commerce and the natural laws or principles which govern it. One would suppose that neither of them had ever opened a work on political economy or entered a counting house. Why, sir, their claim is that commerce should be prosecuted for glory. The interests of humanity demand that it should be prosecuted for utility—prosecuted so as to enlarge the mass of wealth and thus widen the circle of human enjoyments. And, sir, the great Lawgiver that framed the constitution of the universe has ordained that it shall be thus prosecuted. The natural laws of trade promptly lop off every member of the commercial profession that undertakes to prosecute his business on the principle of glory. He is soon covered with shame instead of glory; he passes from the ranks of the mercantile class, discredited, fallen, dishonored, a suppliant at the bankrupt courts. The gentleman from Erie [Mr. Clinton] said he did not believe the merchants of New York were a set of shop-keepers; he knew they were not in Buffalo. I trust they are not; I trust and believe that they understand their business as well as the merchants of New York. I think we have had evidence of it on this floor. There are exceptions, however. I remember a few years ago a merchant of Buffalo coming to New York, and it was my misfortune to hire him an expensive house. He commenced his business on this system of public spirit, investing in fancy stocks and other unprofitable enterprises, such as the gentlemen regard as essential to the development of the material resources of the country. Very soon he failed to pay his debts; and he left, forgetting to pay them or to pay his rent. He is one of the class that I think my friends speak for. Sir, legitimate commerce is governed by the principle of free competition. That principle compels each of its votaries, if he would be successful, to deal with fairness, with honor, with honesty, with economy, knowing that unless he does all these he will get no custom. And the result is that that system is most beneficial to all the parties concerned: for, while it secures profit to the merchant, it exchanges the surplus pro-

ducts of the world at the cheapest possible rates. It is in that way that it has widened the sphere of human enjoyment more than any other department of human industry, for it is a more effective means of enlarging the volume of wealth than either agriculture, manufactures or mining. We occasionally have illustrations in commerce of the broad public spirit referred to by the gentleman which looks at the good of others and not of themselves. They aim at glory, like the builders of the Great Eastern, and, like them, they produce a monument of folly. Others, equally zealous of glory and equally ignorant of the principles of commerce, might construct a canal along the banks of the Hudson. It would be a great work of public improvement; but, sir, it would possess no utility—it would be but a monument of their own folly. So, if we enlarge the Erie canal at great cost, with no additional business to give it, it will be a great work of public improvement, but it will be a greater monument of the folly of those who projected it and carried it out.

Mr. CHURCH—I desire to say a few words, Mr. Chairman, on the amendment proposed by the gentleman from Erie [Mr. Verplanck]. I confess I was surprised that such a proposition should be made to this Convention under the circumstances which now exist. It is a most extraordinary proposition. If our friends who choose to call themselves the exclusive friends of the canals do not meet with any other disaster, I am sure they will never be hung for their modesty. [Laughter.] We have been engaged for ten days in discussing a proposition of the Canal Committee, by which it was proposed to improve the canals by a limited expenditure of \$8,000,000, to come from the revenues of the canals; and this Convention, after the most elaborate discussion, manifested such a decided sentiment of aversion to the proposition that the committee proposing it abandoned it themselves and dare not bring it to a vote. Now, sir, they come forward with a proposition that allows the Legislature to submit to the people the question of borrowing twenty, fifty or one hundred millions of dollars to make improvements not only upon the Erie canal but upon all the canals of the State. They provide no day of payment; they only provide that payment shall not begin until after 1878, without any provision for paying interest. We have disposed of the revenues in such a way that the interest cannot be paid from them; and yet we are asked in apparent sincerity to commit financial suicide. Why, sir, it seems to me to be monstrous. This Convention has determined negatively, by the abandonment by the Canal Committee of their proposition, among other things, that there is no necessity for, or utility in the enlargement of the canal, and has refused to expend \$8,000,000 for that purpose. Will this Convention now turn round and say, though we do not believe the enlargement of the canal to be necessary or proper, yet we will authorize the expenditure of \$50,000,000, or any other sum which can be log-rolled through the Legislature, and then by united interests enough log-rolled through a single election, and have an unlimited debt with no means of payment saddled upon the people of this State? I should be

astonished to find a man in this Convention ready to go for this proposition. The gentleman from Onondaga [Mr. Alvord] has told us that in order to amend the Constitution it will require the approbation of two Legislatures. Sir, that is the very reason why I am opposed to this proposition, and in favor of resorting to an amendment if necessary. I wish it was three Legislatures instead of two. It is only another check upon this enormous debt creating power. We have not too many, sir; two Legislatures do not constitute too many checks. The great evil of legislation is running into debt and taxing the vitals out of the people. We are engaged in shutting the doors of the treasury, in creating checks to the people's pockets, in putting on the breaks to the bankrupts' downward career; and two Legislatures are not too many checks to schemes of debt and expenditure. I would rather go for adding another, and making it three instead of taking off one. Sir, we are overwhelmed with debt on every hand; we are overwhelmed with public bonds. We have national bonds, State bonds, county bonds, town bonds, city bonds and village bonds, until the people of this State may well exclaim to the outside world, in the language of St. Paul, "I would to God that not only you but all that hear me were altogether as I am, except these bonds." [Laughter.] The gentleman offers a proposition to create an unlimited debt, and issue bonds without limit, and without ever requiring their payment or providing any means to pay even the interest. I submit to the gentleman from Erie [Mr. Verplanck], as a fair man, as I believe him to be, whether this Convention has not exercised a spirit of liberality for the benefit of the canals. Sir, by a strict construction of the Constitution of 1846, every dollar of your revenues is pledged for the payment of the outstanding debts down to the time they are fully discharged. But there is a construction—not the true construction, as I claim—by which the balance over and above the sinking fund which we have provided of \$2,418,000 may be used for some other purpose. We have yielded to that construction; we have given them that surplus which will amount, as they claim, to \$600,000 a year; and they claim that the business is to increase, and that it will run up beyond that sum. We have also taken out of this article \$200,000 a year for the support of the government, which was required in the Constitution of 1846. We have taken that out and yielded it up; besides, the Convention have determined that after the advances of \$18,000,000 have been returned to the treasury, they will not place any restriction upon the Legislature as to the manner in which they may be appropriated, and judging from the past the canals are quite certain to get the lion's share. Now, after all this has been done for the canals, I submit whether it does not become those who claim to be the champions of the canals to remain quiet, and say "We are entirely satisfied." I hope this Convention will not yield another inch in this direction. We have done more than we had a strict legal right to do, but it is not appreciated. It has been done in a spirit of liberality and in a spirit of concession. I now ask these gentlemen to

come forward and help pay the public debts as quickly as possible, and then do what they ought to have done years and years ago—after the debts of the State are paid—ask a reduction of the tolls by which the large exactions upon the commerce passing over the canals may be removed.

Mr. T. W. DWIGHT—I do not propose to detain the committee for any length of time, but only to say a single word in reply to the personal remarks that were made in respect to my own course of action by the gentleman from New York [Mr. Opdyke]. That gentleman, no doubt unintentionally misrepresented my proposition. I did not take that position that we were to enlarge the locks of the canal or to enlarge the canal itself on the ground of "glory." I specifically said that one of the great points in my mind was, whether this enlargement was necessary, but that the spirit with which a great State should come to the consideration of such a question as this was, to look at the interests of the people along the line of the canal, and at the interests of the State, and at the interests of the general government; and that it was also a consideration worthy to be taken into account whether we should not keep up an enterprise that we had already undertaken to carry out. It was not true that I said that the work was to be prosecuted simply on the ground of "glory." That gentleman has seen fit to read me a lecture, because my remarks show that I have no acquaintance with the subject of political economy. Now, sir, it has happened to be my duty in the course of my professional life to pay some particular and special attention to that subject, and I think that I have paid such attention to it; and after examining most of the leading authors on this subject, I never have found that they placed the construction of a great national work on the question of mere dollars and cents, on which the gentleman from New York [Mr. Opdyke] has based it. His theory is that a State ought not to undertake the construction of a canal unless it produces a pecuniary revenue. Nor should it be enlarged, unless it can be shown in advance, by hard facts, that the enlargement would return specific pecuniary results to warrant the expenditure as a mere investment. I say, sir, that with such views he is the one who has not rendered the spirit of the authors on political economy. He has simply followed the mere letter instead of rising to the consideration of the higher questions connected with the subject. For why does a State have anything to do with a public work at all? When private enterprise can carry it out why should the State prosecute it? Why, if it is a mere question of dollars and cents, does not a company carry it on instead of a State? It is because there are some other considerations than those of mere private property which lead the State to undertake these great public works. That eminent economist, John Stuart Mill, is clear to the effect that a State should not, as a general rule, interfere with the processes of production, though he as distinctly admits that the case of roads and canals is an exception—largely, because private persons will not take a sufficiently broad view of the ends to be accomplished. (Pol. Econ. Vol. 2, p. 606.) The State must take into account

and consider those very questions of which I have spoken, looking over the whole wide field which the interests of the entire country demand.

Mr. OPDYKE—Will the gentleman be kind enough to inform me what considerations he has reference to?

Mr. T. W. DWIGHT—These considerations that I have stated—the fact that we stand in this geographical position with regard to other States which makes it necessary for us to give them the means of access to the ocean; the fact that the productive resources of the State are developed by means of these improvements, by bringing the producer and consumer nearer together. That clear writer on political economy, I. B. Say, is very decided upon this subject. While he denies that the State should, in general, engage in the direct production of wealth, yet he strenuously insists that it may indirectly aid the producer by opening roads and canals, constructing academies, libraries, public schools, and museums, promoting voyages of discovery, and incurring expenses for the general enlargement of knowledge. All of these are objects which do not necessarily repay their cost directly, but often return it many fold in the indirect results which they contribute to the wealth of the nation. He shows with surpassing clearness how the position of a State in respect to its neighbors is analogous to its own relations to a county or a town; it has an interest in their prosperity, being sure to profit by their opulence. He praises the policy of the States of this country on this very ground, declaring it useful and honorable to mankind that one nation among so many should conduct itself uniformly upon liberal principles. If, therefore, we take an enlightened view of this subject, it is clearly for our interest to develop fully the resources of the Western States. While I insist upon these principles, I have never asserted that we should not lay abundant tolls upon these canals in order to obtain a return of what we may expend. I never have looked at this question in a sentimental point of view, but I have said that it was a justification of the acts of the friends of the canals that there were higher considerations than those mere petty ones upon which the gentleman from New York [Mr. Opdyke] sees fit to place the question of enlargement, such as making it turn upon the balance-sheet of a ledger; for that reason I do not feel the pressure of his criticisms, and I do not feel that a man should be charged with having paid no attention to the topic of political economy because he does not take the shopkeeper's view of this subject. If I had paid no attention to such questions as this I should consider that I was occupying the time of this Convention to no purpose and that I had no right to appear on this floor, and therefore I insist that no gentleman should make such statements as has been made by the gentleman from New York [Mr. Opdyke] unless they are altogether justified.

Mr. AXTELL—The gentleman from Orleans [Mr. Church] has mistaken the action of this body in relation to this question thus far. If I understood him correctly he says that the committee to-day, by its vote and by the expression of its sentiments in the remarks of the gentlemen who have addressed the committee, and by the fact that certain propositions of the Canal Com-

mittee were abandoned, has decided that there is no immediate necessity for the enlargement of the canals. I do not so understand the action of this Convention, and the general current of the views expressed here. I understand that the current of opinions here is, that the necessity is not so immediate and pressing as to demand that we shall place within the Constitution a definite provision for the immediate enlargement of the canals. Not that the feeling or the views of this committee are that there shall be a practical inhibition, such as is sought now to be incorporated in the Constitution by those who oppose the amendment of the gentleman from Erie [Mr. Verplanck]. I believe that is the position of this committee. I believe that a majority of the gentlemen of this committee are opposed to these narrow restrictions that are sought to be fastened upon the Constitution of this State by the gentlemen who advocate the project of the Finance Committee. I believe the majority of this body are in favor of the traditional policy of this State in regard to the canals, that, therefore, they are resolved there shall not be placed within the Constitution these restrictions that will prevent the enlargement of the canals when the time has fully come when enlargement is demanded. I believe the majority of this body are determined that there shall not be placed in the Constitution these restrictions, which must yield under the pressure of great exigencies when they arise. That, I believe, is the position of this body. I have been an attentive listener to the various arguments that have been made; I have been an attentive listener to this discussion which has been going on for so many days; I have thought and I now think that the views which are proposed to this Convention by the gentlemen of the Finance Committee partake more of the character of views over the counter than they do of broad, comprehensive statesmanship. It seems to me that the changes which have been rung on this question of debts and bonds have partaken somewhat of the spirit of those who traversed this State at one period in our history and drew fearful pictures of the horrors of war and the widows and orphans that were made while our soldiers were facing the enemy. I say that the same spirit seems to pervade a certain class of men here and through the country, who are continually drawing these fearful and gloomy pictures with regard to taxation. We met the fearful exigencies of war, and we shall meet these debts that have resulted from that terrible war through which we have passed. We shall meet them manfully; our people will not repudiate them; nor will they be frightened from their public spirit by this cry of taxation. They will not be diverted from carrying forward these great improvements which are necessary for the honor and for the prosperity of the State. They will not be frightened by this pressure of debt and these terrible "bonds." I think that the great man that was alluded to by the gentleman from Orleans [Mr. Church] was in a very excellent condition, notwithstanding his bonds; and so I think that the State of New York is in a very flourishing condition, notwithstanding its "bonds." I do not think, sir, that we are

the most grievously taxed people on the face of the earth, as was affirmed on this floor last evening. I do not think either that the percentage of the taxes is what it was stated to be by the gentleman from Orleans [Mr. Church]. I do not believe that we pay six per cent on the real value of the property of this State. I think, also, that the poor and the laboring men of this country are in a better condition than are the poor laboring men in other countries. They do not suffer on account of this pressure of taxation. And, therefore, I am opposed to this narrow spirit that would arrest these great public improvements because of debt and taxation. I believe that we shall not get any advantage from this narrow policy. We shall not increase the wealth of the State; we shall not increase the means of meeting this enormous taxation which gentlemen say is upon us.

Mr. VERPLANCK—I accept the amendment of the gentleman from Ontario [Mr. McDonald].

Mr. RATHBUN—The gentleman says that the Legislature shall provide for that within eighteen years. What does the gentleman mean to be understood by that?

Mr. McDONALD—What I mean is simply this—that the same obligation is contained in section 14, that the Legislature shall provide in the law how the interest shall be paid as it becomes due, and the principal within eighteen years that the revenues do not provide for. It is simply a pledge of the revenues, and providing a tax for the balance, instead of providing a tax for the whole.

Mr. RATHBUN—I would suggest to the gentleman to withdraw that, because it now reads so as to provide for the payment in eighteen years.

Mr. SCHOONMAKER—I am opposed to the amendment as it now stands. I see by the provisions of the amendment adopted this morning, that the remaining revenues of the canals in each fiscal year may be applied by the Legislature to the improvement of the canal. That provides the manner in which it may be done; but this provision of the gentleman from Erie [Mr. Verplanck] is made to follow it immediately, and to provide that whenever in their opinion the commerce of the country demands it, they may pass an act for such improvement, which shall not be effectual until submitted to the Legislature. Now, I submit that adding that provision to this section, and to a provision for the use of the surplus, since that has no particular provision of the manner in which they shall be used, this provision controls the former; and if this is adopted, you cannot use this surplus money at all except by an act under this provision, submitted to the Legislature. Therefore, it limits, in a variety of ways, the use of the money spoken of in the previous part of this section. I have another objection to the amendment. I am willing, and desirous, that some provision should be made in this Constitution by which the enlargement of the Erie canal may be accomplished, when necessary, without the necessity of an amendment to the Constitution. But I am not willing to incorporate and include in that provision the lateral canals which are not now and never have been paying canals. I have another objection to this amendment as it stands now, and

that is that it is unlimited. It is not limited to the seven or eight millions of dollars necessary for the improvement of the Erie canal, but it authorizes a loan of any amount; and, as the gentleman from Orleans [Mr. Church] says, under this you may raise a loan of a hundred million dollars. For these reasons I shall vote against the amendment.

Mr. A. F. ALLEN—I move to amend the amendment offered by the gentleman from Erie [Mr. Verplanck], by prefixing the following:

“But if the canal board at any time hereafter, shall become satisfied that the canals are unable to do the business offered on account of incapacity, and shall unite in a report to the Legislature stating the specific enlargement or improvement.”

Mr. VERPLANCK—I will accept that amendment.

Mr. SCHOONMAKER—That proposes a certificate from the canal board, and I believe the proposition of the committee is to abolish the canal board.

Mr. TILDEN—I want to know if it has been considered to what extent these various modifications will add to the labors of the Committee on Revision, of which I happen to be an unfortunate member, and whether it may not make our duty so laborious that we shall not be able to get through with it in any reasonable season.

The question being then taken on the amendment offered by Mr. Verplanck, as modified, it was lost, on a division, by a vote of 26 to 56.

The SECRETARY read the third section, as follows:

SEC. 3. After paying the expenses of collection, superintendence and ordinary repair, there shall be appropriated and set apart in each fiscal year, commencing on the first day of October, in the year one thousand eight hundred and sixty-seven, the whole of the remaining revenues of the State canals, as a sinking fund, to pay the interest as it falls due, and redeem the principal of the several debts specified in section two of this article, until the said several debts shall be fully paid or provided for; and the principal and income of said sinking fund, together with the principal and income of the sinking funds now provided for the payment of said debts, which shall have accumulated on the first day on October, eighteen hundred and sixty-seven, shall be strictly applied to that purpose and to no other purpose or object whatever.

The said several debts shall be fully paid by the first day of October, 1878, and if in any fiscal year there shall not be contributed from said revenues at least the sum of \$2,418,000, the deficiency shall be supplied by taxation the next year, unless in one or more of the years before such deficiency shall have occurred, there shall have been appropriated to said sinking fund, over and above the said sum of \$2,418,000, a surplus sufficient to make up said deficiency. The tax authorized to be levied to provide for the sinking fund to pay the floating canal debt, is hereby suspended after the first day of October, 1867.

Mr. ANDREWS—I move to strike the section out.

The question was put on the motion of Mr. Andrews and it was declared carried.

The SECRETARY read the fourth section as follows:

SEC. 4. After the debts specified in section two are fully paid or provided for, according to the provisions of section three, the remaining revenues of the canals, after paying the said expenses of collection, superintendence and ordinary repairs, shall, in each fiscal year, be paid into the treasury of the State to pay the amount advanced for canal purposes by taxation, specified in the first section, and the interest thereon, until the whole amount so advanced, with interest at five per cent per annum, shall be fully paid, and until any amount hereafter advanced for canal debts or other canal purposes, with interest thereon at five per cent per annum, shall be fully paid.

MR. CHURCH—There are some verbal amendments which have become necessary to this section in consequence of the action of the Convention upon the previous sections. I move, therefore, that in the first line "section 2" shall be amended to read "section 1;" that in the second line "section 3" shall be made "section 2;" and that in the sixth and seventh lines the words "specified in the first section and the interest thereon" shall be stricken out and that there shall be inserted in the place thereof the words "amounting, with interest thereon, to the sum of \$18,007,289.68, on the first of July, 1867."

MR. GREELEY—I would inquire whether this section has not in substance been rendered impossible or irrelevant by the previous action of the committee. I have no choice on the subject, except that we should not go and perfect this section after we have practically abolished the section.

MR. CHURCH—Not at all. This section provides that the money paid to the canals by taxation shall be returned into the treasury. Then what shall be done with it after we get it into the treasury will depend upon the disposition of the sixth section. This section simply provides for returning the money into the treasury, and it seems to me we ought to provide for that.

MR. GREELEY—I have not voted upon any of the propositions which seem to me to have destroyed this section, because I was not present when they were acted upon. But it seems to me that the action of this committee has been such as to render this section entirely superfluous. However, I submit it to the gentleman.

MR. EVARTS—Will the gentleman from Orleans allow me to ask him what good purpose is to be served by this section, after the past action of the committee?

MR. CHURCH—I do not understand that there is any action of the committee in relation to this subject. The only action of the committee was to strike out the statement of the amount of this advance in the first section of this article; but the committee have taken no action upon the question whether the funds shall be returned into the treasury or whether any restriction shall be placed upon the Legislature as to their disposition after they are in the treasury. After this section shall have been perfected in accordance with what has been previously done, I will give my reasons for desiring that the last amendment shall be adopted.

The verbal amendments in the first and second lines of the section were agreed to; and the question was stated upon the amendment to strike out the words "specified in the first section and the interest thereon," and to insert the words "amounting, with interest thereon, to the sum of \$18,007,289.68, on the 1st of July, 1867."

MR. ALVORD—I move to amend the proposition by striking out the entire section, and inserting the following:

"Every contribution or advance made to the canals of this State since June 1, 1846, or which may hereafter be made from any source, except their direct revenues, shall, with interest thereon, at current rates, be paid into the treasury of the State out of the canal revenues as soon as the same can be done consistent with the provisions of this article. All sums so paid shall, together with all surplus revenues thereafter derived from the canals, be applied exclusively to the payment of any then existing debts of the State, until the same shall be fully paid; provided, however, that such payment may be delayed for the purpose of applying such revenues to the improvement of the canals, if in the judgment of the Legislature, the necessities of commerce and the interests of the State demand the same."

The CHAIRMAN—The question must be taken first upon the amendment of the gentleman from Orleans [Mr. Church] to perfect the section.

MR. VAN CAMPEN—I would prefer the eighth section to this section, and for the information of the committee I will read it: "Every contribution or advance to the canals or their debt, from any source other than their direct revenues, shall be repaid into the treasury, with interest," etc.

MR. ALVORD—The committee have, by a very decisive vote, stricken out of the original proposition of the Committee of Finance, the \$18,000,000; and for the purpose of enabling the surplus revenues of the canal, beyond the payment of the specific debts which are now liens upon those revenues, to be applied for the purposes of improvement of the canals. The simple proposition of mine is to go a step further in the same direction; and inasmuch as we have virtually postponed the payment of the \$18,000,000 for ten years, to leave it, at the end of the ten years, to the Legislature, if at that time the interests of commerce and the necessities of the State demand it, that the debt may be further postponed, and that the revenues of the canal from that time forward may be appropriated to the improvement of the canal. That is the meaning of this amendment that I propose. I believe that I speak the sentiments of the majority of the committee and of this Convention, that they are agreed that under no circumstances will they consent that the revenues of the canal shall, under the provisions of the Constitution we are about to make, be put in a position where they can be taken to pay a portion of the bounty debt. Yet they are willing to consider the \$18,000,000 wholly invested in the canals, not to be repaid so long as the canals shall require their revenues for their improvement; for putting the money into the treasury, under these circumstances, would be simply taking money from one pocket and putting it into the other. If the people of the State do

not see fit to alter the Constitution in that regard before the ten years are passed away, we are willing that the debt should continue; and, so far as we are concerned, we are willing to put it into the Constitution that in the event of their being wanted by the canals, the advances need not be returned at the end of the ten years. I think if the committee go on in the direction they have indicated by their past action, they will take this section in preference to the fourth section of the Committee on Finance.

Mr. CHURCH—I desire simply to state to this Convention precisely what is the effect of this amendment; and, then, if the Committee desires to adopt it, of course the responsibility will be with them. This fourth section provides that these advances shall be returned to the treasury of the State, that when they are in the treasury of the State, the Legislature can appropriate them to any purpose they see fit. They are not bound to appropriate them to the canal. They are not bound to appropriate them to any other purpose; but every interest in the State can come to the Legislature and present its claim to these moneys. If this amendment is adopted you say that these revenues thus advanced shall never be returned. It is morally certain that not one dollar of these \$14,000,000 of taxation you have wrung from the people of this State will ever be put into the treasury of the State for the general purposes of the State—never one dollar. The amendment, drawn with care and skill, is subject, in the first place, to the provisions of this article, which expressly provides that the remainder of the revenues of the canal shall be appropriated to the purposes of the canal, and then expressly authorizes a delay or postponement of these advances so long as any amount may be needed for the improvement of the canal. I submit that if we consent to the indefinite postponement of the return of these advances to the treasury of the State, you will never find any successors of ours to claim or insist upon enforcing a return of them. I desire the Convention to remember that we do not tie them up in the treasury by this section at all. We leave the Legislature free to appropriate them. Is this Convention willing to say that the people of this State shall never have any benefit of the money paid by taxation, for any purpose under heaven, except to be put into the canal? That is the question to be decided. If the committee decide upon that, they take the responsibility. I do not believe the people of this State will ever sanction such an appropriation of these moneys. They paid these taxes under a solemn Constitutional pledge; and we are under every obligation, and the people demand the fulfillment of that obligation, that they may have some benefit of these moneys in the general treasury of the State; that the repayment shall not be postponed. It is nonsense to put into this Constitution that the moneys shall be returned; it is nonsense to repeat this promise, unless you fulfill the promise that was made twenty years ago. It is mockery to say again that we will return the contributions made, if we are not ready now to fulfill the agreement made by our predecessors twenty years ago. At the same time I only desire the committee to understand the effect of it. If they intend to do

this, and to release all claim, and to postpone indefinitely the return of these advances, let them do it; but I desire that they shall do it with their eyes open.

Mr. ANDREWS—I am disposed to favor the amendment of my colleague [Mr. Alvord], but I do not think there is so much importance in this particular question as the gentleman who last addressed the Convention supposes. The Finance Committee, by section 4, provides that there shall be repaid into the treasury certain sums, after they have been raised by taxation, for the benefit of the canals; and the two following sections provide for the disposition of those sums, which shall be repaid in this manner into the treasury, to wit: by applying these sums toward the payment of the then outstanding debts of the State. Now, what is the provision suggested by the amendment of the gentleman from Onondaga [Mr. Alvord]? If I understand it, it is precisely, in effect, the provision of the sections to which I have referred in the report of the Finance Committee, except that it authorizes the Legislature, after the present debt shall have been paid, to wit: after the expiration of eleven years, instead of imperatively requiring the Legislature, then to apply those revenues which shall come from the canals to the payment of the then existing debts, it makes the proviso that this shall be done, unless the Legislature then shall determine that a portion of these revenues shall be applied to the further improvement of the canals, and allows, if in the judgment of the Legislature it is proper to do so, that application instead of the direct and full application of all the revenues to the extinguishment of the debt. The amendment of the gentleman from Onondaga recognizes the fact that, when these moneys are paid into the treasury, they shall go to pay these debts, but provides that if, after the expiration of ten years, the Legislature shall see fit to appropriate these revenues, or any portion of them, to the further improvement of the canals, they may do so; in effect, if that determination should be reached, postponing, so far as the sums applied to that purpose are concerned, the payment of the debts which may then be existing against the State. Now, my position from the outset in this discussion has been that we needed more experience before we were ready to say that the canals need enlargement. Who can doubt, in this Convention, that in 1878 we shall be in possession of facts from which it will abundantly and clearly appear, one way or the other, whether additional improvement and enlargement of our canals are needed? I think the proposition eminently wise and conservative, and I do not regard it with that distrust which seems to have taken possession of the mind of the gentleman from Orleans [Mr. Church].

Mr. OPDYKE—The committee cannot fail to see that if this amendment is adopted, the financial policy of 1846 is abandoned after the expiration of ten or eleven years. Instead of leaving the control of the financial interests of this State in the hands of the people, this amendment will then transfer it to the Legislature. That is the sum total of the proposition. As I said the other day, I do not believe there is a member of this

Convention that has heard a murmur of complaint against the financial policy adopted in 1846. It has performed admirable service for the people of this State, restrained its indebtedness, and restrained taxation. All parties seem to have approved it. Why shall we now reverse it? For one, I have not the slightest doubt that if this amendment shall prevail, the people will reject our work. For one—I speak in all sincerity—I feel that they should reject it. If we change a policy that has been so beneficent to this State, without the slightest apparent reason for its abandonment, the people will say that our conduct has not been judicious. Who can foretell for eleven years whether a dollar of money will be needed for canal enlargement? Who can foretell the condition of things then? Why distrust the people? Why not leave the matter in their control, as it has been for the last twenty years? When it becomes necessary to go beyond the limits fixed by the Constitution, they do not hesitate to do it. In 1854 an amendment was made, and the money was raised and expended; and so it will be again, whenever it shall be deemed wise to do so. I do hope that this Convention will leave with the people the entire control of their finances hereafter.

Mr. ALVORD—I do not, and cannot for the life of me, understand what the gentleman from New York [Mr. Opdyke], and the gentleman from Orleans [Mr. Church] mean by undertaking to say that we are doing an act here that we do not desire the people to pass upon. We are not a legislative body; what we enact here is not law. It has got to go through the ordeal of the people. This whole matter is to be submitted to the people; and if the people decide that we have done wrong, they will reject what we have done. We are making a Constitution to-day; that is what we are doing. Another thing. If the gentleman from Orleans [Mr. Church] will say he will stop here, and strike out the next two sections of the bill, I will go with him and withdraw my amendment. But the gentleman from Orleans is taking the position, like a lawyer, that this proposition merely leaves it to the Legislature, and in the next breath he will demand the adoption of the other sections, which close this up beyond all hope; and that I shall always oppose, and hope the Convention will reject.

Mr. CHURCH—Then the gentleman does not object to this section?

Mr. ALVORD—Certainly I do not; but I have decided objections to the others.

Mr. CHURCH—The sixth section is the one you object to?

Mr. ALVORD—Yes, sir.

Mr. CHURCH—In relation to the sixth section, that can be omitted if such is the opinion of the committee

Mr. ALVORD—I understand that "if it is the opinion of the committee," and I propose to get the opinion of the committee at this point, in this stage of the matter. What do we propose to do? First—

Mr. CHURCH—I cannot make a promise for this Convention; but so far as I am concerned, I am willing to strike out the sixth section. That will leave it at the disposal of the Legislature.

Mr. ALVORD—That will suit me perfectly. I am entirely willing it should so be left.

Mr. CHURCH—Then you withdraw your amendment?

Mr. ALVORD—I cannot withdraw my amendment until I understand whether these are to be, or are not to be stricken out.

SEVERAL DELEGATES—All right.

Mr. ALVORD—Then I will withdraw my amendment.

Mr. A. F. ALLEN—I would like to have this Convention recognize that debt of \$18,000,000, spoken of.

Mr. CHURCH—They do.

Mr. A. F. ALLEN—They do; but I want to give my reason for it. I do not live on any canal, or within seventy-five miles of any canal; but my part of the State has been taxed uniformly with other parts of the State for these eighteen millions, or fourteen millions and some hundreds of thousands of dollars. I distrust my friends, the gentlemen from Orleans [Mr. Church] and the gentleman from Onondaga [Mr. Alvord]. Those gentlemen talk here about low tolls. That seems to me like diverting your revenues from the canal to the transportation men, and to the elevator men. I want this money paid back into the treasury. I want the State to have the benefits of it. If we have got those charities to sustain, and a State government as expensive as ours, I want some benefit from the money raised for the canals. I do not like the language. We will make the tolls as low as they can be made, to sustain the canal and keep it in ordinary repair. That looks like ignoring the debt. Let us have the \$18,000,000 paid into the treasury of the State, and let us have the benefit of our portion of it.

Mr. ALVORD—I will renew my amendment, on coming to look at it a little more carefully and critically. I yielded to what seemed a general request, and withdrew it without sufficient reflection. If gentlemen will look at the fifth section they will see that this money must all be paid into the treasury before a single dollar of it can be appropriated; "after complying with the provisions of the third and fourth sections of this article, and after paying said expenses of collection, superintendence, and ordinary repairs, the surplus revenues" can be disposed of so and so.

Mr. CHURCH—Certainly; that is all right.

Mr. ALVORD—I do not understand that it is all well. I understand what I am about.

Mr. CHURCH—Will the gentleman allow me to explain a moment? The fourth section provides for the return of the advances into the treasury. As they are returned into the treasury the Legislature has power to do what it pleases with them; and after they are all paid, the surplus revenue shall be used according to the fifth section. The Legislature in the mean time can do as it pleases with them.

Mr. ALVORD—It may be it will be so construed; but it may be also that it will be construed in the other way. The section reads that you must fully comply with the provisions of the third and fourth sections before you can make any disposition of the money. There is another reason why I desire to make the amendment, that if the

section is left as it stands, it does not deal with the proposition which has already passed this committee to-day, in reference to the disposition of the surplus after paying the \$2,418,000. That is not recognized at all.

Mr. CHURCH—Nor is it necessary.

Mr. ALVORD—It strikes me that it is necessary. If my amendment should not prevail we need the words, after "repairs" in the fourth line, "or improvements authorized by this article."

Mr. CHURCH—I will explain again, and the gentleman will see that it is entirely unnecessary.

Mr. ALVORD—I should prefer to have the matter passed upon by the committee.

Mr. CHURCH—Then, of course, what I said about the sixth section will not apply.

Mr. VERPLANCK—I rise to ask a question, and I ask it for information, whether the amendment proposed by the gentleman from Jefferson [Mr. Bickford], and rejected to-day, did not dispose of this question. I asked whether he designated to appropriate these revenues to canals or railroads, and he answered "Yes;" and I am inclined to think that the rejection of his amendment settles that question.

Mr. LAPHAM—In the first place I am opposed to section 4, as proposed to be amended by the gentleman from Orleans [Mr. Church], for this reason: he undertakes to specify in the body of the section the amount which is to be repaid to the treasury. He arrives at that amount by computing interest at five per cent on the various advances which he claims have been heretofore made. I prefer a section which provides that all the advances, whatever the amount may be, shall be repaid into the treasury with interest at current rates. That is the amendment offered by my colleague [Mr. McDonald], and I prefer it very much to the section as contained in the article or the amendment which is now pending, to specify the sum of \$18,000,000, and compute interest upon that from this time. The other is a better provision. If section 4 is retained and section 5 is also adopted, we have this result: we have a provision that the advances which have been made shall be refunded to the treasury without any specification whatever as to what shall be done with them; and we have then the fifth section, which provides that after complying with the provisions of the previous section, which is the repayment of all these advances and after paying the expenses of superintendence and collection and ordinary repairs, the surplus revenues of the canals shall in each year be disposed of for the improvement of the canals. What is the effect of that? It puts off the improvement of the canals until after the debt of twenty-one millions and interest shall have been paid, which cannot be done until 1878; and it then puts off the improvement of the canals until these eighteen millions with interest shall have been refunded to the treasury. It will be answered that it does not do this because the Legislature in the mean time are at liberty to use the money that is put into the treasury for that very purpose. Sir, by implication the Legislature are denied the exercise of that right to use the surplus revenues now, before the whole amount is refunded to the

treasury. On the other hand the amendment proposed by the gentleman from Onondaga [Mr. Alvord] gives the Legislature the exercise of that power in the mean time. In other words, instead of putting off the improvement of the canals until after the repayment of the present debts, and the refunding of these advances, it authorizes the improvement to be made as soon as the present debts are paid and extinguished. In that case, the policy will be this: from now until 1878, the surplus revenues of the canals over and above \$2,418,000, may be annually applied to the improvement of the canals; and after 1878 the Legislature may use the revenues of the canals for purposes of improvement to such an extent as in the judgment of the Legislature the necessities of the State and interests of commerce require. Who can object to having the revenues of the canals thus used? Who can object if it is necessary for their improvement, that their own earnings shall be used to improve them, and that the advances which have been made to the canals shall be refunded to the treasury when the canals shall have been put in a proper condition to earn the greatest possible amount of revenue for the State? For that reason I am in favor of the amendment proposed by the gentleman from Onondaga [Mr. Alvord].

Mr. BICKFORD—The amendment offered by the member from Onondaga [Mr. Alvord] is the ninth section of the report of the Committee on Canals with an addition. It might be well enough to adopt it as far as the word "article" in the seventh line; but all after that appears to me to be pernicious. The remainder of that section reads: "All sums so paid shall, together with all surplus revenues thereafter derived from the canals, be applied exclusively to the payment of any then existing debt of the State, until the same shall be fully paid." And then he adds, that they shall be applied to the improvement of the canals (I forget the exact wording of his amendment, but that is the idea), on the payment of the existing debts of the State; and of course the existing debts of the State there means the bounty debt principally. I hope some future generation will see the time—I may not live to see it—when these \$18,000,000 will be returned to the treasury of the State from the revenues of the canals; and when it is thus returned, I do not want it applied to pay that bounty debt; I want that bounty debt paid by direct taxation, as the people agreed to pay it. I want the citizens of the city of New York to help pay that debt. I understand that this bounty debt is made up by assumptions of debts which would otherwise pass upon the several counties of this State, and upon the city of New York among others. I am not willing that that bounty debt shall be paid out of the revenues of the canals, and especially out of that \$18,000,000 which has been advanced by taxation, and advanced by the people for the purpose of internal improvements. When it comes into the treasury of the State again, having answered its first purpose, it should, in equity, be advanced for other purposes of internal improvement, at least in part, besides the canal interest. The time is already coming when there are other schemes of internal improvement, interesting to

other parts of the State besides the city of Buffalo and the city of New York, and the line of water communication between them. Other portions of the State are interested in internal improvements that are now applicable to them — railroads. I hope that when the eleventh section reported by the Committee on Finance shall be reached, it will be struck out, so that the State can appropriate of its revenues the \$18,000,000 returned into the treasury of the State from the revenues of the canal; and in justice they should appropriate a portion of it to those parts of the State which have not received State aid for railroads. I want the city of New York and other parts of the State to pay the bounty debt by taxation, as they have agreed to; and when the \$18,000,000 of revenues from the canals are paid into the treasury of the State, I want a portion of that to go to other parts of the State outside of the improvements already aided. That is an act of justice; and these moneys should not be swallowed up by the payment of the bounty debt or the improvement of the canals, as the amendment of the gentleman from Onondaga [Mr. Alvord] proposes. I am in favor of being liberal toward the canal interest of the State; but I am not in favor of allowing Aaron's rod to swallow up all the other rods and all the other interests of the State. There are other great and important interests in the State besides the canals; and although they should be fostered and encouraged, they are not all that need to be considered. This amendment, in effect, will appropriate the whole of it to the improvement of the canals, which will be like the rod of Aaron and swallow up all the other rods.

Mr. MURPHY—I think it is manifest from the discussion upon the amendment, that it is the desire that there shall be in the Constitution a recognition of the liability of the canals, that the revenues of the canals shall be repaid to the State for the amounts that have been or may hereafter be advanced by taxation for the improvement of the canals. On the other hand there is no disposition to insist upon any particular time for the repayment of these advances after the expiration of 1878, if the improvement of the canals may then be deemed necessary. On the one hand we do not wish to express in the Constitution that this is to be postponed; or on the other hand that the Legislature is not to have power to apply these revenues to any purpose which they may determine. It appears to me that we can only carry out these views by striking out both the fifth and sixth sections of the finance report and retaining the fourth. I understand now that the gentleman at the head of the Finance Committee [Mr. Church], and that the committee are willing that the fifth and sixth sections should be stricken out. I hope the gentlemen of the Canal Committee, on the other hand will meet them, and consent to take the fourth section, and not insist upon the specific expression in the Constitution that these revenues shall be postponed for the purpose of enlargement. The whole question will then be left to the Legislature to determine at the expiration of 1878, whether they will or will not apply these revenues for the purposes of enlargement; and there will be nothing in the Constitution to prohibit the Legislature from pursuing that course.

It appears to me that this is a plan upon which we may all harmonize.

Mr. VERPLANCK—I offered an amendment to strike out of the first section the amount of \$18,000,000; and my object was that this amount should not stand as a debt for which the canal revenues were pledged. This amendment was adopted by the committee. It is now proposed in this fourth section to provide that "after the debts specified in section 1 are fully paid or provided for, according to the provisions of section 3, the remaining revenues of the canals, after paying the said expenses of collection, superintendence and ordinary repairs, shall, in each fiscal year be paid into the treasury of the State, to pay the amount advanced for canal purposes by taxation," etc. It proposed to take away from the Legislature power to use the surplus revenues for the improvement of the canal after the debt named in the first article is paid. I do not see the propriety or the justice of the proposition. If this section is retained, we stand about where we stood when we commenced this debate.

Mr. KERNAN—The gentleman from Orleans [Mr. Church] last evening stated that he had a report from the Comptroller or Auditor, showing that, upon a full and fair accounting between the State and the canals, the canals were indebted about \$20,000,000. I would like to inquire of him whether the canals owe these \$18,000,000 besides the \$20,000,000.

Mr. CHURCH—No, sir.

Mr. KERNAN—Without saying anything upon the accuracy of that report, it certainly shows a much larger result than the report to which I called the attention of the committee the other evening. But taking that as a basis, that upon a fair accounting between the canals and the State, the balance against the canals is \$20,000,000, including taxation and every other item of indebtedness of the canals to the State, we have provided here that the canals shall pay to the State a debt of \$21,000,000. The question I wish to put to the chairman of the Finance Committee is whether this assumed indebtedness of \$18,000,000, taxation does not disappear when the canals shall have paid up the debt of \$21,000,000 provided for.

Mr. CHURCH—I think the answer to my friend from Oneida [Mr. Kernan] is very simple, that the \$21,000,000 which he says are charged to the canals belong to the canals to pay the canal debts—debts contracted for the purposes of the canals.

Mr. TILDEN—Besides the \$18,000,000.

Mr. CHURCH—The account which was made up by the Auditor and Comptroller was on account of money which had been paid for the canal for the purposes of improvement, with simple interest, on the one side.

Mr. COMSTOCK—Are not the canals charged with the moneys represented by that debt?

Mr. CHURCH—No, sir; not at all.

Mr. TILDEN—That is treated as a specific debt of the canal.

Mr. BECKWITH—In one account it is five per cent and in another it is seven per cent.

Mr. CHURCH—It is reckoned the same on both sides of the account.

Mr. McDONALD—Does not that \$21,000,000 include \$5,000,000 from the general fund debt?

Mr. CHURCH—It does.

Mr. McDONALD—Then if that is paid it should be credited to the canal debt as paid to the general fund debt; and it would reduce it by that amount.

Mr. CHURCH—On that subject it is unnecessary to spend any time—

SEVERAL DELEGATES—Go on.

Mr. CHURCH—In 1846 they had an accounting, at which accounting the interest was cast quarterly, which made the canal debt, as I stated last night, thirteen millions of dollars. For that thirteen millions the canals were to pay the six millions of general fund debt, and to pay the State a perpetual annuity of two hundred thousand dollars for the support of the government. The discrepancy (if any) arises out of the manner of casting interest. In commencing in 1817 and casting interest from that time to the present, upon both sides we have the whole amount of twenty millions.

Mr. McDONALD—Does not the account to which the gentleman refers commence back in 1817, and have no reference whatever to the Constitution of 1846? And ought not the canals to be credited with the amount they paid to the general fund debt?

Mr. CHURCH—No, sir; I think not. I think that was all settled and arranged in the Constitutional Convention of 1846. My object in procuring the account was simply for the purpose of answering what has been so often said, that on a fair accounting the general funds were indebted to the canals.

Mr. VERPLANCK—May I ask the gentleman a question?

Mr. CHURCH—Yes, sir.

Mr. VERPLANCK—I would like to know on what account the chairman of the Finance Committee congratulated the friends of the canals when he spoke a little while ago upon what they had gained by this amendment?

Mr. CHURCH—I will tell the gentleman, in all frankness, what they have gained. They have gained the surplus over and above the \$2,418,000 from the revenues of the canals, which they say will amount to at least \$600,000 annually.

Mr. VERPLANCK—How do they gain it?

Mr. CHURCH—My dear sir, you have provided for it in the section you have already adopted. You have taken the surplus over and above the sinking fund for the payment of the debt.

Mr. VERPLANCK—Then why insist on this section?

Mr. CHURCH—Now?

Mr. VERPLANCK—Yes, sir.

Mr. CHURCH—To make sure that these debts shall be paid. You have put into the treasury these eighteen millions and you can claim the whole of it, and the Legislature can give it to you if they see fit. There is another point you have gained. I say a fair construction of the Constitution of '46 appropriates these eighteen millions to other purposes than the canals, and I am willing to leave it to the Legislature to say whether they will not give it to the canals notwithstanding. Yet the more these gentlemen get, the more they ask.

Mr. PAIGE—In 1846, I understand the indebtedness of the canals, upon the accounting, was ascertained to be thirteen millions of dollars.

Mr. CHURCH—Yes, sir.

Mr. PAIGE—That was provided for in this way. The original third section of the Constitution of '46 provided that \$670,000, being the interest at five per cent on the \$13,000,000, should be paid every year into the treasury. That was changed in 1854.

Mr. CHURCH—That was in the original provision. The original report by Mr. Hoffman in the Convention of 1846 was, as the gentleman states, that the canals should pay into the treasury \$672,000 as an annuity, being five per cent upon the thirteen millions. That was changed in 1854, so that the canals were charged with the general fund debt, amounting to something less than six millions, and an annuity of two hundred thousand dollars. The provision of the original third section was that after the canals were completed, or after the debts were paid, then the canals should pay \$672,500.

Mr. PAIGE—I had the impression that the \$672,500 were to be paid before.

Mr. CHURCH—No sir, it was as I said, after the canals were completed and after the debts were paid. But in 1854 that was stricken out.

Mr. ALVORD—The difference between the proposition of the gentleman from Orleans [Mr. Church] and myself is simply this: he says you may put this money in the treasury, and then the Legislature may give it to the canals or to some other purpose, as they choose. My proposition is that it shall be paid into the treasury; but if, in the wisdom of the Legislature, instead of so disposing of it, they shall see fit to use it for canal purposes, then the debt is merely postponed, but still remains; and the \$18,000,000 are still to be paid. It permits the surplus revenues to be used for the purpose of improving the canals, and when that shall have been accomplished, then it puts the \$18,000,000 back into the treasury. According to the gentleman's idea, this money goes into the treasury and then can be given to the canals. The canals do not ask it as a gift. They are willing to earn it.

Mr. CHURCH—Now, will the gentleman allow me to ask him a question?

Mr. ALVORD—I will sir.

Mr. CHURCH—According to his explanation, your proposition is not as favorable to the canals as mine.

Mr. ALVORD—I think it is more so.

Mr. CHURCH—As he has explained it, it is not as favorable.

Mr. ALVORD—I think it is a great deal more favorable to the canals than is the proposition of the gentleman from Orleans. I believe the canals are sooner or later, if they are taken care of, going to be a benefit and advantage to the people of the State in the way of revenues. I believe they are going to add to the prosperity of the people of the State. I am willing that they shall pay this money back. My provision includes the provision of the eighth section of the gentleman's proposition, which takes care of the advances already made or that may hereafter be made; but it postpones after 1873, or may post-

pone, the repayment of the \$18,000,000. It does not deprive the State of the \$18,000,000, or the interest accruing thereon. We put in the Constitution a provision that the Legislature can dispose of this money as they please, and if they so choose they may postpone the debt and use the money for the purposes of the canals. We say nothing different from the proposition of the gentleman from Orleans, except that we continue the debt against the canals, while we permit the surplus revenues to be used for the benefit of the canals.

Mr. CHURCH—That is all very plausible; but I tell this committee that the postponement of returning these advances is a release practically, and the gentleman knows it.

Mr. ALVORD—The gentleman in the same breath tells us that they are going to be given to the canals any way.

Mr. CHURCH—No, sir; I have not said they would be. I have said the Legislature has power to give them to the canals and take a new debt; but that postponing these old obligations practically puts an end to it.

Mr. BECKWITH—It strikes me there is not so much difference between the two gentlemen as some may suppose. The gentleman from Onondaga [Mr. Alvord] proposes that the \$18,000,000 of debt shall be suspended, and that the canals shall be improved if improvement of the canals be necessary, out of the surplus revenues of the canals. The gentleman from Orleans [Mr. Church] proposes that the surplus revenues shall be paid into the treasury and apply to the discharge of the \$18,000,000, if I understand him correctly. Then, when they get into the treasury, if they should be appropriated to the canal for their improvement, what will be the effect of it? Will it be a debt against the canal?

Mr. CHURCH—A new debt against the canal.

Mr. BECKWITH—It becomes a new debt against the canal. In case the Legislature does not see fit to appropriate them they still remain, and a portion of the \$18,000,000 will be discharged by them. The only fear I have of the proposition of the gentleman from Orleans is this, that the Legislature, instead of appropriating the surplus revenues for the improvement of the canals, may appropriate it for the payment of the bounty debt, and leave the canals without improvement.

Mr. CHURCH—I want to give the Legislature that power if they desire it.

Mr. BECKWITH—Having somewhat in charge the interest of one canal, I shall feel disposed to favor the proposition of the gentleman from Onondaga [Mr. Alvord] for I would like to see, if improvement be necessary, that the surplus moneys go to that object.

Mr. EVARTS—It seems to me that too great significance is given to this matter of the book-keeping of the State, in which these eighteen millions figure. So long as it remained to be actually advanced out of the revenues of the canals, before the improvement of the canals could be commenced out of their own income, it was a matter of substance; but now that it has been stricken out of the aggregate of debts that are to burden the revenues of the canals before there is

to be a free application of the revenues to their own purposes, it seems to me that it is utterly unimportant. It strikes me, therefore, that the proposition of the gentleman from Kings [Mr. Murphy] that section 4 should stand, as it reads, and that sections 5 and 6 should be stricken out, places the matter where all the interests of the State can deal with the money of the State produced from the canals, according to the exigencies of the public service as they may arise.

Mr. BICKFORD—I wish to say one word. This Aaron's rod turned into a serpent swallows up a good deal more than I at first supposed. It reads in this way: "All sums so paid shall, together with all surplus revenues thereafter derived from the canals"—to the end of time. That is the amendment, sir, that to the end of time all the surplus revenues shall be applied either to pay the debts then existing, or to the improvement of the canals. That is the effect of his amendment; it swallows up everything, to all eternity.

Mr. TILDEN—I think there is an oversight in the amendment of the gentleman from Onondaga [Mr. Alvord] that has not attracted the attention of the committee. It is this: appended to the general provision that is to operate in the future as well as the past is the provision that the money that shall be returned to the treasury—not merely these eighteen millions, but any money that may be returned into the treasury from any future advance to the canals—shall, when it is so returned, still be applicable to the canals. I think that is carrying the proposition farther than the drawers of it intended. Sir, I have had one view on this subject from the beginning, and that is to provide for the sinking funds as they now stand in the Constitution of 1846, and leave the rest of the revenues of the canals to the disposition of the Legislature. I have, therefore, in my individual judgment, been at all times averse—and have so expressed myself—to the application of those revenues to the payment of the bounty debt, or to the prescribing of any particular application in this instrument. If I supposed that the effect of the provision of the gentleman from Orleans [Mr. Church] would be to interfere with the provisions we made to-day in the application of the revenues to the improvement of the canals at a future period, I should not vote for it. But I think when we simply claim the recognition of this debt for advances, postponing the receipt of those advances until the objects are accomplished, first, the payment of the debt; second, the application of the revenues of the canals to their improvement, leaving the eighteen millions in the treasury subject to be appropriated to the use of the canals or to any other purpose whatsoever to which the Legislature may lawfully and constitutionally appropriate them, we accomplish every object that the friends of the canals ought to desire. I concur, therefore, in the views of the gentleman from Kings [Mr. Murphy], in striking out the fifth and sixth sections, retaining the fourth. I think with that, all parties ought to be satisfied.

Mr. LAPHAM—If the gentleman from Orleans [Mr. Church] will substitute in the place of his fourth section so much of the amendment as is contained in the first portion of it, down to the

word "it," so that it will read in this form, "Every contribution or advance to the canals of this State since June, 1846, or which may hereafter be made, from any source except their direct revenues, shall, with interest thereon, at current rates, be repaid into the treasury of the State out of the canal revenues, as soon as the same can be done consistent with the provisions of this article;" and not limit it to a specific amount, and a specific rate of interest, but make the provision general that all advances shall be thus refunded; and strike out the fifth and sixth sections, I am content that this disposition shall be made of the whole subject.

Mr. CHURCH—I cannot agree to that. I would rather have the whole section stricken out, and have nothing at all than the ambiguous and general clause which the gentleman proposes to insert.

Mr. LAPHAM—What is the ambiguity?

Mr. CHURCH—The ambiguity is the general promise to pay back these advances as soon as the same can be done consistent with the provisions of this article. That time will never arrive.

Mr. LAPHAM—Does the gentleman wish it done before?

Mr. CHURCH—I want a definite provision that it shall be returned, specifying the time and specifying the amount.

Mr. LAPHAM—I trust this committee will not enact that a specific sum shall be reimbursed to the treasury from these revenues, because we know nothing as to the accuracy of that amount, either as to the original amount of the advances or as to the computation of interest. It is enough in all conscience to refund to the treasury the advances, whatever they may have been. Now, I do not understand my friend from Orleans [Mr. Church] when he talks about the liberality which he has exercised. Who has invested him with capacity to donate to the canals of this State? Talk about liberality! Liberality to whom? The liberality of a State toward its own property; that is just what it is. Liberality to us as the representatives of the people in the disposition we are to make of the revenues of the State for the purpose of taking care of property which we all agree shall remain the property of the State. The gentleman talks as if it were a gift to us—conceding to us so much. He has really claimed credit for the extraordinary liberality he has evinced in allowing the State money to be used for the purpose of improving the canals—the property of the State. I do not understand that there is any such attitude occupied by any gentleman on this floor. I do trust, whatever provision we make, that while it shall be a provision that will be operative in its language it shall not be a provision committing us to the return of any specific sum, because we have no means of knowing what that sum is. The amendment I propose is that this return shall not be made until after the previous provisions of the article shall have been complied with. There is another difficulty with the original section. It is not a provision to refund. It is a provision that the surplus revenues shall be paid into the treasury of the State and pay the amount advanced for canal purposes by taxation, and specifying what that amount is. Now, the language of the

amendment is more appropriate. It provides, in express terms, that the canal revenues shall refund to the treasury the amount which has been taken therefrom by taxation, whatever it may be.

Mr. BOWEN—I wish to inquire whether I correctly understood the chairman of the Finance Committee in his answer to the question put by the gentleman from Onondaga [Mr. Alvord]. I understood the question of the gentleman from Onondaga to be, whether the report of the auditor of the canal department and of the Comptroller, which was handed in yesterday morning, did not state the account as between the canal and the State, charging the canal for every dollar that had been applied to the canals, and then crediting the canals with the revenues which had been received; and that that brought in the canal, debtor to the State in the sum of a little less than \$20,000,000. The gentleman answered that he so understood the report. Am I correct? Then I understood him to say in avoidance of that, that there was a statement made in 1846, and that we should go on now in pursuance of that statement and plead that in bar to the conclusion that the canals are now indebted to the State in the sum of \$20,000,000—less than \$20,000,000. Now, I wish to inquire of him, whether we have not in the report before us the account stated, based on the settlement made in 1846, and whether it is not there shown that the canals are debtor to the State only in the sum of a little over \$7,000,000?

Mr. CHURCH—No, sir; we have no such account.

Mr. BOWEN—Then I cannot understand the report of the auditor of the canal department as contained in the Manual that has been furnished to us. It is true that the canals are not charged there with the advances that have been made pursuant to the provisions of the Constitution of 1846, or with the advances that have been made to the canal from the general fund. Excluding those advances I wish to inquire whether the account will not be right?

Mr. CHURCH—I do not know.

Mr. BOWEN—Well, the account says so. Now, one word further. When I voted in favor of the amendment of the gentleman from Erie [Mr. Verplanck] to strike out, as a part of the indebtedness of the canals of the State, this sum of \$18,000,000, I did it with the understanding that it should no longer be considered an indebtedness from the canals to the State; and I based my vote upon this report, which I find in our Manual, because of the settlement made in the Constitution of 1846. Now I am in favor of the canals returning every dollar advanced by the State, but I see no propriety in their paying any more. Again, I wish to ask the gentleman from Orleans [Mr. Church] whether, if we return the \$21,000,000, we have not in fact returned to the State from the revenues of the canals every dollar that the State has advanced on account of the canals? If we have, I see no propriety in the canals advancing anything further to the State. I wish, again, to inquire of the gentleman whether it is not true that, if we do pay that \$21,000,000, the canals will have repaid to the State every dollar the State has advanced, together with interest thereon? I wish

to be corrected if I am wrong. I believe the account which was handed in a day or two since had interest computed at the rate of seven per cent on both sides; that includes every dollar that has been spent on the canals, and when we pay these \$21,000,000, the State will be reimbursed for every dollar that has been expended on account of the canals, together with the interest thereon at the rate of seven per cent per annum.

Mr. CHURCH—How do you propose to pay the \$21,000,000? Give your note?

Mr. BOWEN—We have already provided for the payment of the \$21,000,000, beyond any contingency whatever. The revenues of the canals can pay it.

Mr. CHURCH—You can pay your own debt. This is not a part of the general debt.

Mr. MURPHY—We have now passed out of the fog, in which we have been so long involved, into a clear sky. We are in sight of the polar star and I hope we will keep our eyes upon it until we get safely extricated from our difficulties. I was, from the first, opposed to both these reports—to that of the Finance Committee and to that of the Canal Committee. Neither of them met my views nor did they meet the views of this Convention as the result has shown. The report of the Finance Committee tied up the revenues of the canals so that no improvement of the canals could be expected within any definite time. Until these advances which have been and may be made by the State should be repaid, nothing could be done with the revenues toward enlargements, and it might be twenty, thirty, forty or more years before the canals could be expected to help themselves. On the other hand the report of the Canal Committee virtually proposed still further to plunge us into debt. It is not that I am opposed to debt of itself, because I think debt often is an advantage, and a man may often borrow money to his advantage, but I wish, as I have said before, in the course of this debate, to see the time speedily arrive, when the canals will be free as in the nature of the case they can be to commerce, and liberated from the burdens upon them, so that the people of the State may derive all the advantages possible from that great artery of trade. I was, therefore, opposed in these particulars to both reports. I wish to see liquidated the public debt created for the canals, and which was properly chargeable upon them. The committee has provided now, so far as it has gone through with this article that that object shall be consummated. Let us hold on to that position. I propose on the other hand that we shall then appropriate the canal revenues to the purposes of the canal, if in the judgment of the people of this State through their representatives at that time they shall so deem proper. But there is another principle which steps in here and of which we must not lose sight. That is, we must not in this instrument tie up the hands of the Legislature, nor on the other hand direct them in advance of any necessity which may arise, how they shall dispose of these revenues. The report of the Finance Committee restricts the Legislature and prevents it from doing anything. The report of the

Canal Committee, on the other hand, directs the Legislature what it shall do with these revenues, specifically. I think we have discarded or intend to discard both of these propositions and to say that when the canal debt shall be paid the revenues shall be absolutely at the disposal of the Legislature, as in their wisdom they shall determine. If they think proper to appropriate them to the enlargement of the canals that they may do so, and this seems to me to be the part of wisdom and prudence. Let us pursue the course we have entered upon and strike out the fifth and sixth sections of this report which restrain the Legislature, and insist on the retention of the fourth section, which leaves the money in the treasury to be appropriated as the Legislature shall determine. I understand the chairmen of both these committees are willing to pursue that course, except that the chairman of the Finance Committee insists there shall be an account stated in this section as between the State and the canals and that it shall be made a matter of record that the canals owe the State for advances beyond the canal debt, the sum of \$18,000,000. That I think is unnecessary. We can strike out the few words which occur in the sixth and seventh lines of the fourth article "to pay the amount advanced for canal purposes by taxation specified in the first section and the interest thereon," so that it will read "the amount advanced for canal purposes by taxation until the whole amount with interest shall be fully paid," thus leaving the amount to be adjusted hereafter. I hope the two committees will act upon this solution of the difficulty.

The CHAIRMAN—Does the gentleman propose an amendment?

Mr. MURPHY—I do.

Mr. ALVORD—I will say that I am ready to agree to that proposition.

The CHAIRMAN—The Chair will suggest that further amendments are not now in order.

Mr. MURPHY—If the gentleman will withdraw his amendment, I will move the amendment I have suggested.

Mr. CHURCH—The gentleman from Ontario stated, and the gentleman from Kings seems to suppose that there is some uncertainty about the amount which has been advanced by taxation to the canals. I hold in my hands an official statement from the canal department of every item of advance with the interest thereupon. When I drew this article, I took the utmost pains to have every item precisely accurate. I cannot understand why it is, that if we say these advances shall be returned, we shall not state the amount. Here is an official record of the amount. Do you want to leave it to the public officers to chaffer about hereafter? Do you want to leave it to canal men to charge, as they have, over and over again, that it has been paid? Do you want to leave it to future quarrels in your Legislature and canal boards and Constitutional Conventions, when you have the official record here, which no man can dispute? Why not insert the amount? What is the importance of leaving it out, unless it is desired to dispute it hereafter?

Mr. ALVORD—Will the gentleman permit me—

Mr. CHURCH—Yes, sir.

Mr. ALVORD—Do you not also find from the records of the State department the fact that the canals have paid \$500,000 more than has ever been charged, and whether that \$500,000, at least, should not come out of that \$18,000,000?

Mr. CHURCH—No, sir, it should not; and I will tell the gentleman why it should not. In 1846, for a debt of \$13,000,000, the canals agreed to pay the general fund debt and \$200,000 a year.

Mr. ALVORD—Where does the gentleman find this fact? The State debt, as it has always been understood, was seven millions and some odd dollars; credit was given for payments upon the part of the canals to the amount of two millions, which reduced it to five million six hundred and thirty-six thousand dollars: there is no thirteen millions about it.

Mr. CHURCH—I am not saying anything about the manner in which that debt was made up in the Constitutional Convention of 1846. It may be they compounded the interest too much; but I do say that the debt returned by the then Comptroller to that Convention, and reported by the Chairman of the Finance Committee to that Convention, was \$13,000,000 against the canals.

Mr. ALVORD—I wish to ask the gentleman another question.

Mr. CHURCH—I would much prefer that the gentleman would wait until I get through with my statement. The canals were not required to pay the whole amount. They agreed to pay the general fund debt and two hundred thousand dollars a year for the support of the government to discharge the thirteen millions. They have not paid the two hundred thousand dollars for as many as six years. We do not charge them with that. There was another thing in the Constitution of 1846 which has been stricken out; after the canals were completed they were to pay annually the sum of six hundred and seventy-two thousand dollars to defray the expenses of the government. That was stricken out in 1854. These items have been entirely left out. Now, what is the sense of chaffering about this amount? If gentlemen will stand up now and dispute about it what will they not do ten years from now?

Mr. ALVORD—If I understand the gentleman, he has obtained from the Comptroller's office and Auditor's office, a lot of tables not yet printed, showing the entire amount advanced by the people of this State to be \$20,000,000, including these \$5,636,622. The canals have assumed as the general fund debt these \$5,000,000. Yet he claims by his report we owe \$18,000,000 to the State over and above the \$5,636,622, making in the aggregate \$3,600,000 more than the actual result as shown by these tables.

Mr. CHURCH—I have explained to the gentleman over and over again that in the Convention of 1846 the amount which was found against the canals was reckoned with quarterly interest, as provided in the Constitution, which makes the difference. That is the interest which the Constitution of 1846 requires to be paid upon these advances; but we have waived that and computed simple interest only.

Mr. ALVORD—I will ask the gentleman

whether we are to go to the records of the Constitutional Convention of 1846 or to the records of the State kept from 1817 up to the present time, as our guide to go by?

Mr. CHURCH—I wish to ask the gentleman a question, and I hope he will answer it frankly. I wish to ask him whether he does not understand that in the Convention of 1846 a full and final settlement was made between the State and these canals, and whether all the State officers have not so regarded it since that time, and whether we ought not to so regard it now?

Mr. ALVORD—I propose to answer the gentleman in this way. There was a settlement made in 1846, by means of which we were bound to pay \$5,636,622.22. We have paid upon that over \$500,000 of interest since that time.

Mr. CHURCH—The gentleman does not answer my question, whether or not that was a full and final settlement, and ought we not so to regard it?

Mr. ALVORD—I do so regard it, and have ever so regarded it.

Mr. CHURCH—Then why not act upon it?

Mr. ALVORD—I propose to act upon it.

Mr. CHURCH—Very well. Now, cannot we all see that the longer the time runs the more uncertainty there is in reference to these accounts? In this very year of 1867, the people of this State are taxed \$1,500,000. Last year we were taxed over \$2,000,000, which went to the canals; the year before \$800,000, and the year before that \$500,000; the year before that \$1,500,000, and the year before that almost \$3,000,000, and so on running up to 1854. Now, while this amount is fresh and can be ascertained with certainty, let us fix it beyond future cavil.

Mr. MURPHY—I think it is unnecessary to say anything about the advances which were made to the canals prior to 1846. That matter was adjusted by the Constitution of 1846. We have now determined that the amount of five million and odd dollars, which was then declared to be the sum of such debt advanced to the canals by taxation, should be paid out of the revenues of the canals; that we have determined in the second section of this article. Therefore, it appears to me that any discussion in regard to that subject is entirely irrelevant, and only tends to obscure our sky. My friend from Orleans [Mr. Church], whom I delight always to follow, when I can, asks very significantly, why not state, when the matter is fresh before us, the amount of the canal advances to be repaid? In the first place, we cannot state it. I find the honorable gentleman giving us one amount and the gentleman from Onondaga, who addressed the Convention last evening [Mr. Comstock], giving us another.

Mr. CHURCH—I did not understand the gentleman from Onondaga [Mr. Comstock] undertake to give any statement of the account.

Mr. MURPHY—He read from the Manual a statement which claimed, instead of the advances amounting to \$18,000,000, they were, after deducting credits, only \$7,000,000. So far as the difference between these respective statements is concerned it may be more or less. It is enough that there is a disagreement. What right has

the gentleman from Orleans [Mr. Church] to call upon us here in our capacity in making a Constitution, to determine this question of figures? It does not belong to us, nor can we decide it. We use the figures as they are presented to us, to enlighten us in our work. If we were all agreed that this debt was \$18,000,000 it might possibly be proper to insert it in the Constitution, but we are not agreed.

Mr. CHURCH—Who disagrees?

Mr. MURPHY—I understood the gentleman from Onondaga [Mr. Alvord] to disagree.

Mr. CHURCH—I do not understand that to be so.

Mr. MURPHY—And I understood the gentleman from Ontario [Mr. Lapham] to claim that it was a different amount.

Mr. CHURCH—I do not so understand it.

Mr. MURPHY—Now, says my friend, why not put this amount of \$18,000,000 into the Constitution when the matter is fresh? Is it more fresh now than it will be ten, fifteen or twenty years hence? Are the records of this State to be abstracted? Are the evidences as to what amounts have been advanced to the canals to be lost? Will all honor have flown from public officers twenty years hence? And does fidelity and capacity belong to officers in the past and present only? Cannot a true statement of the amount be obtained in 1878 as readily as now? It appears to me it can. This argument of the subject being fresh in the minds of the public officers amounts to nothing at all. Rather than to have this bone of contention defeat this great measure under consideration, I would strike out the provision which requires such a statement, and if the gentleman from Onondaga [Mr. Alvord], who has proposed the amendment, will withdraw it I will move so to amend the section.

Mr. ALVORD—If the gentleman from Kings will make that amendment I will withdraw mine.

Mr. MURPHY—I move that the fourth section be so amended as to strike out the words "specified in the first section, with interest thereon," in the sixth and seventh lines.

Mr. LAPHAM—I am in favor of this amendment, and I need state no other reason than this: the gentleman from Orleans [Mr. Church] has obtained from the proper office a statement of the advances which have been made by way of taxation of the canals since 1846. That is one side of the account, and nothing else. We have here, in response to a resolution of the Convention, the entire balance-sheet presented by the auditor, with interest upon both sides of the account, from which it appears that all these advances down to the sum of but little over \$7,000,000 have been refunded already.

Mr. CHURCH—It is no such thing, I beg to say.

Mr. MURPHY—I was not aware that this was already moved to be amended by inserting, instead of the words I moved to strike out, the amount of the debt on the 1st of July, 1867, to be \$18,867,000. I proposed to strike that out.

Mr. LAPHAM—I think we see that there should be no attempt to state in the Constitution the amount of the canal debt as being a particular sum. Either the auditor has committed a very

gross error in making up this balance-sheet, which says the canals have been advanced in the aggregate, and with interest, the sum of a little over \$7,000,000, or else the statement made by the gentleman from Orleans [Mr. Church] is entirely fictitious. I repeat that his claim is not that what remains of the advances yet unpaid, but is that all advances which have been made since 1846 are to be refunded again, although they have been once refunded except this \$7,000,000.

Mr. CHURCH—If gentlemen will rise up in this Convention in the year 1867, with the official records before their eyes, and with the official statement here in this Convention of the amount of these advances, and deny the account, what will they not do in ten or fifteen years from this time. There is no doubt about this account. It is the merest caviling in the world to dispute it. No man can dispute it. There is no statement which contradicts it; there is no statement in the Manual which presumes to contradict it. Allow me to read from the Manual the statement made by the auditor himself:

"The canals are indebted to the treasury \$14,396,727.97 for taxes levied and received for canal purposes since 1846, besides the interest which must be refunded out of the canal revenues after the payment of certain preferred claims."

This is the last clause on page 421. That is in the Manual and in the report of the auditor. These tables to which the gentleman refers have no reference to this question.

Mr. ALVORD—Will the gentleman read the lower part of the same page?

Mr. CHURCH—That is the part I did read.

Mr. ALVORD—I mean on page 420:

"Paid to the treasury since 1846 in excess of the actual interest on the general fund debt during that period, \$551,633."

Mr. CHURCH—Certainly; it has paid a portion of what it was bound to pay by the settlement of 1846, and only a portion. It seems to me gentlemen know perfectly well that this account is correct. There is no possible doubt about it. You have stated the amount of your debts in the first section of the article. Why did you put in those figures? You have obtained them in the same way precisely as I have obtained this statement, from the auditor's department. Now, sir, I regard it as important that this amount should be inserted in the Constitution, so as to settle all controversy hereafter.

Mr. RUMSEY—It seems to me it is hardly worth while to have so many words on this subject. We have half-a-dozen statements, and they vary. One party errs or the other party errs. Now, the figures in regard to these transactions are in the Comptroller's office, and they will stand there always. There is no difficulty in getting at them at any time to settle the matter. Therefore, when we have these discrepant statements, it is manifestly improper for us to adopt either one in the Constitution. For that reason I hope the amendment of the gentleman from Orleans [Mr. Church], presenting an arbitrary sum, will be voted down, and that we shall adopt the proposition of the gentleman from Kings [Mr. Murphy].

Mr. McDONALD—I want to ask the Chairman of the Finance Committee [Mr. Church] one ques-

tion. Did he not get from the canal office and from the Comptroller's office the statement as between the canal fund and the general fund, in which five per cent was reckoned, and in which there was shown a balance of \$18,000,000 due the general fund from the canal fund. And does not these \$5,000,000 which we paid stand now charged to the general fund?

Mr. CHURCH—Not at all.

Mr. McDONALD—If the canal fund has paid the general fund it should have a credit for that amount. As everybody knows, all these statements are made upon suppositions. The one the auditor has made up is on the supposition that seven per cent interest is paid, and includes every dollar that was spent on the canals except what is in the miscellaneous account, and that stands \$1,500,000 against the canals. That is only a true statement on the supposition that seven per cent is to be charged; but that is incorrect for the reason that seven per cent was never paid or never received. The other account is made up with interest at the rate of five per cent, and that was never paid and never received. The books in the Comptroller's office will show the exact facts. The gentleman in his statement says we made a bargain in 1846 and we will hold you to it. Since that time certain advances have been charged to the canals. Now, we say that bargain is incorrect by his own showing. It does seem to me it is no part of the duty of this Convention to put in the Constitution a statement to which all do not agree. There are some here who believe the statement is not true. Therefore it ought not to be inserted as a provision in the Constitution.

Mr. CHURCH—Who says it is not true?

Mr. McDONALD—I say it is not true, according to the account, unless you stand by the agreement, as you claim, of 1846. I see by the table you obtained from the canal auditor's office and the Comptroller's office the interest is not computed at a higher rate than five per cent.

Mr. CONGER—Does the gentleman understand that, in the table of the gentleman from Orleans [Mr. Church], the advance since 1846 and the general fund debt created prior to 1846 are given as distinct and separate amounts?

Mr. McDONALD—Yes, sir.

Mr. CONGER—The amount since 1846 is over fourteen millions, and it was to be repaid from the canal revenues at the current rates of interest; but in the table the computation has been made at five per cent simple interest, not compound, making eighteen millions.

Mr. McDONALD—I understand that is so, but I understand that all your figures are based on the settlement of 1846. If you go back to 1817 it is not true. The statement is not true according to the account of the auditor at seven per cent. The fact is, that neither of the statements are true. I admit that the settlement of 1846 is correct if you give the credit claimed; but I do not understand that the credit should be given. If the settlement of 1846 was not just, and we know it, we ought not ratify it, and we do know it by the statements already made by the Comptroller.

Mr. PAIGE—I will ask the chairman of the

Committee of Finance [Mr. Church], who made up this account upon which he relies?

Mr. CHURCH—The auditor? It was made with the greatest possible care, and with the understanding that it was for the Finance Committee.

Mr. PAIGE—I wish to present a remark or two. The only authentic and official evidence we have of the indebtedness of the canals to the State is from the account of the officer who represents the canals, and who perhaps represents the State. From that account it appears that the \$18,000,000 have been incorporated in this financial article. Nothing authentic has fallen from a single delegate to impeach that account. All other statements of the debt are surmise, suggestions and rumor, selected here and there, having no intimate connection with the accounts presented here; yet we are asked to repudiate this authentic evidence, coming from the hands of the public officers representing the canals.

Mr. LAPHAM—Well, sir, the auditor, in response to a resolution of the Convention, has stated a full account of all the bills of the aggregate cost of each canal, and the entire cost of management, and the legal interest and the aggregate receipts of the canals with interest upon the same, striking an entire balance-sheet, which leaves only a little over \$7,000,000.

Mr. CONGER—Does the honorable gentleman from Ontario [Mr. Lapham] know that that account presented by the auditor, pretending to be a balance-sheet, is made up in this way to show the profit and loss, made or sustained by the State upon each canal, and then, in summing up of these profits he says the Champlain canal has earned \$38,000, and the \$7,000,000 balance to which the gentleman from Ontario refers is made on page 451, but still these accounts falsify themselves, because of the attempt made to take the difference out of the contribution of the laterals—from the main trunk, and then to credit them back again. I took the figures to which the gentleman alludes, and summed up the cost of construction of the canals at \$64,000,000; then interest on that sum added makes \$93,000,000 and over; then the cost of repairs and maintenance at \$24,000,000 and over, and interest on that sum, makes it \$27,000,000 and over. I summed that all up and it amounted to \$210,000,000. Take the sum which he says the canals have earned for tolls at \$92,000,000 and add interest on the same and you get one hundred and ninety-two millions of dollars and one-half nearly; making the balance of the cost \$17,067,000.

Mr. VERPLANCK—The auditor made a mistake; he is not right.

Mr. CONGER—Of course. The account is made on the attempt to show that each canal has gained something and the lateral canals have lost something.

Mr. VERPLANCK—How can you rely upon any such testimony of this character. In courts we would reject all testimony of that kind.

Mr. CONGER—I reject the whole of these figures. I take the auditor's statement, which he gives somewhere else, that the actual amount raised by taxation is \$14,500,000, nearly, and the Comptroller certifies to that. The auditor gives

you that account on the page cited by the gentleman from Orleans [Mr. Church], and that account is truly stated, principal and interest, at \$18,000,000. But now, gentlemen seek to mystify that account, going back beyond 1846. The amount due in 1846 was nearly \$16,000,000, the amount since is \$18,000,000.

Mr. LAPHAM—Will the gentleman allow me to ask him a question?

Mr. CONGER—Certainly.

Mr. LAPHAM—Does the gentleman call a mere statement of the advances which have been made by taxation an account?

Mr. CONGER—Why not? Does not the Constitution say that every advance by taxation shall be repaid with interest at current rates?

Mr. LAPHAM—Has the gentleman any evidence that none of it has been repaid?

Mr. CONGER—That is a very singular query for the chairman of the Canal Committee to make, when he knows, that last year, if he will look at the report of the commissioners of the canal fund, that the surplus revenues, instead of paying the constitutional charges, were nearly half a million short. How could they pay anything in the way of reducing the principal of the debt, when they were half a million short in making up the \$200,000 for the support of the government? While on that point, I will say very briefly this, that the canals have not only gained, in the general fund debt settlement, of \$200,000, released by the constitutional amendment of 1854, for six years, but they did not pay the \$200,000 last year. Sir, they got a release of \$674,000, which they were to have paid, under the Constitution of 1846, they got virtually a liquidation in the settlement of \$13,000,000, and instead of paying an annuity which they were to pay every year, they failed for seven years to pay it, and yet they stand up here and try to make out that this is hard. Again, as between the tax payers and the canals, the tax payers have advanced \$14,000,000 since 1846, and \$6,000,000 before, making \$20,000,000 in all. I am astonished.

Mr. PAIGE—I see no reason why I should take back anything I have stated; nothing has been developed since I took my seat, that induces me to change my position. The State officer, representing the State canals, has given us an account of the advances to the canal debt sinking fund by taxation since 1846. There is nothing here of an official character to impeach or shake the finality of this account, still, gentlemen ask the Convention to repudiate it. There must be, some time or other, a final settlement of account. This is the time for settling it; it has been settled officially and nothing has been preferred here, from any official source, or any official account, to impeach the accuracy of this statement. Assuming that to be so, my judgment is, that we should incorporate this sum in the article and put this question finally at rest. It is time it was put at rest; it is time it was determined finally and not be left open at loose ends, to be changed and made the subject of controversy hereafter. Therefore, I hope the sum will remain in this section of the article.

Mr. BECKWITH—It is said that no evidence has been offered to impeach the statements of the

auditor. In regard to that, I am not prepared to say, but I wish to call the attention of the Convention to one or two facts. In the Manual No. 2, p. 179, you will find, that he states the original cost of the Champlain canal was \$921,011; and of the Glens Falls feeder \$91,944, making \$1,012,915. I, by a resolution, adopted by the Convention, called for a statement with regard to that canal, and he states that the original cost was \$1,257,604.26 making it \$244,649.26 larger than it was in the Manual. I called upon the engineer of that canal for a statement, and he says that its earnings in 1826 (and he commences with 1826) were \$74,000; and he states in a report given to the Legislature last Winter, that its earnings in 1825 were \$72,000, in round numbers; in 1824, \$46,000; in 1823 a certain sum, and also in 1822, for this canal was finished in 1821. These statements differ from those made by the auditor, and the two statements of the auditor differ by \$244,000. When I find such statements coming from that officer, I have no confidence in his statements, as I have already said on a former occasion.

Mr. SPENCER—I desire to call the attention of the committee for a moment to another instance in which the auditor seems to have made a mistake. Upon page 430 of the Manual, will be found a statement of the tolls contributed to the Erie canal by the Chemung canal. It is stated there, for 1866 to be \$41,923.68. Looking at a similar statement for 1866, on page 131, it is stated to be \$41,166.70 and there is a similar discrepancy in the statement for nearly every year for the entire twenty years, and it is about the same with regard to the Cayuga and Seneca canal.

Mr. FOLGER—I wish to show another discrepancy, in this report. The Chemung canal is thirty-nine miles long, the Cayuga and Seneca canal, is 22 72-100 miles long. The auditor reported for 1841, the tonnage on the Cayuga and Seneca canal, twenty-two miles long, to be 58,254 tons, and it earned \$25,332.27. On the Chemung canal, thirty-nine miles long, the tonnage is reported at 189,000 tons, almost three times as much as the other, but the earnings were only \$12,000.

Mr. KERNAN—They paid less tolls probably.

Mr. FOLGER—But there were more tons.

Mr. KERNAN—All the tons do not pay alike.

Mr. FOLGER—But there is this further thing; all the tons that passed through the Chemung canal, had to pass through the Cayuga and Seneca.

The question was put on the amendment of Mr. Church, and it was declared lost, on a division, by a vote of 32 to 56.

The question then recurred on the motion of Mr. Murphy, to strike the sixth and seventh lines, and it was declared lost.

Mr. GERRY—I move that the committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. Gerry, and it was declared lost, on a division, by a vote of 29 to 55.

Mr. ALVORD—For the purpose of making this language harmonious, with the section we have already passed, I move to insert in the fourth line after the word "shall," the words "except as

otherwise provided in this article." Because this takes the entire amount of the results of the canals, after applying them to the debts of each fiscal year, does away with the amount over the \$2,418,000.

Mr. CHURCH—I supposed that our canal friends would be willing to abide by their own agreement, made in open Convention. I understood them to say they would agree to this section, if certain things were done, but now they propose to repudiate. I am utterly opposed to inserting these words in this article. What does the gentleman mean?

Mr. ALVORD—Will the gentleman from Orleans [Mr. Church] answer me one question? I ask if we adopt this, as it now is, whether we do not cut off all right of the canals, to the amount in each one of the years, we have provided for paying the debt over and above the \$2,418,000.

Mr. CHURCH—My dear sir, no.

Mr. ALVORD—I say we do.

Mr. CHURCH—If the gentleman will listen to me for a moment he will see how clear this is. During the payment of the debts you have a sinking fund of \$2,418,000, and you are entitled to the surplus revenues each fiscal year during the payment of that debt, according to the preceding section. After the payment of the debt you return these advances into the treasury.

Mr. VERPLANCK—Then why not say, "except as otherwise provided in this article."

Mr. CHURCH—Because I am opposed to allowing you to claim that there is anything in this article contradicting it.

Mr. ALVORD—You are not in favor of allowing us to claim the balance over the \$2,418,000?

Mr. CHURCH—Not so—this section does not apply until after these debts are all paid. It says so expressly, "until after the debts specified in section 1 are fully paid."

Mr. LAPHAM—Or provided for.

Mr. CHURCH—Certainly, or provided for.

The question was put on the amendment of Mr. Alvord, and it was declared carried, on a division, by a vote of 44 to 39.

Mr. CHURCH—I move that the committee rise, report progress, and ask leave to sit again.

Mr. GREELEY—I wish to understand whether we have passed this section or not.

The CHAIRMAN—Debate is not in order upon this motion.

The question was put on the motion of Mr. Church, and it was declared carried, on a division, by a vote of 43 to 42.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. SHERMAN, from the Committee of the Whole, reported that the committee had had under consideration the reports of the Committees on the Finances of the State and on Canals, had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention and ask leave to sit again.

Mr. MERRILL—I move that the Committee of the Whole be discharged from the further consideration of these reports and that the same be reported to the Convention. In support of that motion, I wish to say a single word. We have

occupied nearly two weeks in this debate. We spent last evening in settling the suit of Tweedledum vs. Tweedledee. We have spent most of this evening in an examination of the accounts of one of the State departments. It seems to me that the general policy involved in these reports has been substantially settled; and I think the details can be more wisely and more expeditiously settled in the Convention, where we can at least have a chance of cutting off this interminable debate and arriving at conclusions.

Mr. VERPLANCK—I move that the Convention do now adjourn.

The question was then put on the motion of Mr. Verplanck, and it was declared carried, on a division, by a vote of 43 to 31.

So the Convention adjourned.

SATURDAY, September 14, 1867.

The Convention met at nine o'clock, A. M.

Prayer was offered by Rev. J. M. LUDLOW.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. KRUM presented a remonstrance of the trustees and teachers of the New York Conference Seminary against abolishing the Board of Regents of the University.

Which was referred to the Committee of the Whole.

Mr. HISCOCK presented a remonstrance of the instructors and trustees of the Monroe Collegiate Institute on the same subject.

Which took the same reference.

Mr. C. E. PARKER presented a remonstrance of the trustees and teachers of Owego Academy on the same subject.

Which took the same reference.

Mr. BARTO presented a remonstrance of the trustees and teachers of the Trumansburgh Academy on the same subject.

Which took the same reference.

Mr. ALVORD presented a remonstrance of the trustees and faculty of Cincinnati Academy on the same subject.

Which took the same reference.

Mr. DALY presented a remonstrance of the trustees and faculty of St. John's College on the same subject.

Which took the same reference.

Mr. AXTELL—In the absence of Mr. Gould the Chairman of the Committee on State Prisons, and at his request, I submit the report of the majority of that committee.

Mr. AXTELL proceeded to read the report as follows:

REPORT.—I.

STATE PRISONS.

That a careful review of the reports of the Inspectors of State prisons, and such other evidence as has been brought under our notice, satisfies us that the mode of governing prisons established by the Constitution of 1846, is essentially defective and that the interests of the people imperatively require the adoption of a different and an improved system.

The reports are chiefly devoted to the discussion of financial details, and there is an absence of those broad views of their duties in relation

to the improvement of prison discipline, and the reformation of offenders which we might reasonably expect to find if the inspectors had been men who were selected on the ground of their personal fitness for such duties of their office.

The financial results of their administration are such as might have been expected from men who were thus elected, almost by chance, and without intelligent selection.

During this period, the excess of expenditure above income, was at Auburn prison,.....	\$294,289 85
" " " Sing Sing ".....	1,192,904 53
" " " Clinton ".....	727,955 02
Making a total excess of expenditure at the three prisons of,.....	\$2,215,000 40
The total salaries of inspectors during this period was,.....	\$66,712 49
The total travelling expenses of the inspectors was,.....	19,734 86
The total travelling expenses of the agents was,.....	4,107 56
The amount paid to sheriffs for the transportation of convicts was,.....	296,197 47
The amount paid for the apprehension of escaped convicts was,.....	1,300 78
Making the total cost to the people of prisons for twenty years,.....	\$2,732,112 54
The annual average of convicts at Sing Sing for twenty years has been,.....	1,000
The annual average of convicts at Auburn for twenty years has been,.....	690
The annual average of convicts at Clinton for twenty years has been,.....	296
The average number in all the prisons for twenty years has been,.....	1,926
The total average cost of each prisoner at the three prisons, above his earnings for twenty years, has been,.....	\$1,376 19
The total average cost of each prisoner at Auburn, above his earnings for twenty years, has been,.....	426 45
The total average cost of each prisoner at Sing Sing, above his earnings for twenty years, has been,.....	1,192 98
The total average cost of each prisoner at Clinton, above his earnings for twenty years, has been,.....	1,753 60
The annual average cost of each convict at the three prisons has been,.....	66 81
The annual average cost of each convict at Auburn has been,.....	21 32
The annual average cost of each convict at Sing Sing has been,.....	86 64
The annual average cost of each convict at Clinton has been,.....	96 13
We have had before us the accounts of the Albany Penitentiary extending from the year 1849 to the year 1866, from which it appears that the total earnings of the convicts during that period was,.....	\$454,902 53
While the expenditures were,.....	\$56,258 94
Leaving a net balance of profit of,.....	\$608,561 56

The only years during which the expenditures exceeded the earnings were those of 1849, 1850 and 1858.

The net annual earnings of each convict at the penitentiary, over the cost of his maintenance, has therefore been, \$20.08.

In the year 1864, the net earnings amounted to,....	\$20,373 45
In the year 1865, the net earnings amounted to,....	21,380 04
In the year 1866, the net earnings amounted to,....	24,413 40

In order that the superior management at this penitentiary may be fully understood, it must be noticed that of the 16,774 convicts sent during the period above indicated, 7,400 were sent there on sentences varying from ten days to three months. This latter class has been a dead weight upon it, as the contractors for the services of convicts will not employ them, as they would not have time to learn their trades in the short time of their confinement. The large amount of net

earnings was therefore earned by 9,374 convicts.

The prisoners in our State prisons remain there from two to twenty years, and are, therefore, far more profitable than those of the penitentiary, and ought to insure a larger revenue to the State.

The average number of prisoners in the penitentiary for the eighteen years from 1849 to 1866 is two hundred and seventy-two. For the past eight years the average number has been three hundred and forty-five.

The average number of deaths in our State prisons for the corresponding period has been thirty-five, or one death to fifty-five prisoners.

The average number of escapes annually has been eight, or one to two hundred and forty convicts.

The average number of convicts who annually become insane in our State prisons is thirteen, or one in a hundred and forty-eight convicts.

The excellent health enjoyed by the prisoners at the Albany penitentiary shows that this profit has not been obtained either by overworking the prisoners or by underfeed of them.

Of the 16,774 convicts who have passed through it only seventy-four have died, which is less than one-half per cent of the whole number, or exactly one in two hundred and twenty-seven.

Forty-three of these deaths occurred in the single year 1866, when small-pox and typhus fever were both brought into the institution by the prisoners from Washington. If we exclude this exceptional year the proportion of deaths is reduced to one in five hundred and eight.

The contrast in these statements is so striking that it speaks for itself and requires no comment.

The financial balance sheet of a prison is not a conclusive test of the excellence of its management. If the discipline is better maintained; if the wills of the convicts are more completely subdued; if they are more enlightened; if their moral feelings are more improved; if, on their liberation, they become better members of society, we may well excuse a large excess of expenditure over earnings.

On applying these tests we do not find that our State prisons have anything to show of superior discipline or superior reformatory tendencies which will console us for the enormous difference in their pecuniary results.

The forty-fourth section of the prison act of 1847 requires the inspectors to erect a specified number of cells at each of the prisons, each of which is to inclose a clear space of nine hundred and ninety-six cubic feet. The provisions of this section have never been executed, and it is a curious illustration of the care with which some of the inspectors have studied the law they were required to administer, that they told us after the expiration of their term of office that they were never aware of the existence of such a section.

We believe that this section contains one of the most important provisions in the whole act. Every inspector and every prison officer knows that the great mass of the prisoners can be governed with great facility if they are not incited to rebellion and disobedience by a few leading

spirits of mischief who are found in every prison. Every warden can draw a sharp and well-defined line between the governable and ungovernable convicts, the former being in an overwhelming majority.

If separate cells were built, as required by section 44, the plotting and mischief-making convicts could be effectually separated from the well-disposed men, which would enable the officers to withdraw many of the offensive, and initiating rules which are now necessary; fewer guards and under-keepers would be required, which would save these salaries to the State; and above all, the reformation of the prisoners would be more certainly assured if the corrupting influences of the incendiaries were wholly withdrawn from them.

Entertaining these views, we look upon the total failure to carry this provision of law into practical effect, as an additional evidence that the provision of the present Constitution has failed to secure the services of competent men for the government of the prisons of the State.

The inspector in charge of each prison is required by section 35 of the act of 1847, to spend one week at the prison assigned to him once in each month, and to give such instructions in writing for its government and discipline as he shall deem to be necessary. He is also required to keep a journal of his proceedings at each visitation, which must be recorded in the books of the prison and exhibited to the next general meeting of the inspectors.

Many of the inspectors have wholly disregarded these provisions, and very few of them have strictly observed its letter and its spirit. These omissions have in our opinion been one of the most operative causes of the evils, and the wastefulness which now exist.

If we inquire into the causes of the bad management of our prisons, we think we find them lying on the surface, patent to every inquirer.

The inspectors of our prisons have never been selected for their personal fitness for the duties of their office, but solely from partisan considerations.

They are nominated by the State conventions of the respective parties, and by the usage of both parties, the nomination is always the last that is made, when the delegates are weary of the work and their interest in the subject is exhausted.

It follows from this, that some one is nominated who has been a disappointed candidate for a higher office, or who has aided some one else to procure a nomination, and who now receives the aid of the successful candidate and his friends as a requital; or prison contractors are skillfully stationed around the room to suggest the name of some one in their interests to delegates who know nothing nor care nothing of the nominee.

It is in vain to say the people choose wisely; the people have practically no choice in the matter. One man, of whom they have never heard before, is nominated by one party, and another man, of whom they are equally ignorant, is nominated by the other party. If they inquire of the delegates who made the nomination, as to their character or fitness, they learn that their

delegates are as ignorant as themselves, and that they only voted for the candidate because some one who stood near them told them that he was the best man.

The people are therefore compelled to choose between two men, neither of whom they know, and who would have been as intelligently selected if their names had been drawn from an urn containing the names of all the electors in the State.

The inspectors, who are elected on political grounds, are compelled in their turn to appoint the under officers of the prison from purely political considerations, and thus reward those by whose exertions they received their own nominations.

In many cases, and we think we may safely say in most cases, the under officers, upon whom the efficient working of the details of the discipline depends, are grossly unfit for the duties which devolve upon them.

The keepers of gambling houses and saloons, shoulder hitters and persons of disreputable character, who have acquired an influence at the polls, have been frequently appointed as under-keepers, and are thus invested with the delicate and responsible duty of guarding and reforming the criminals of the State.

It is owing to the fact that so many dishonest men are appointed from political considerations to offices of trust and responsibility that such large sums have been wasted on our prisons.

It is because the keepers of prisons have so frequently been more depraved and more profane than the convicts who have been placed in their charge, that so little progress has been made in the reformation.

If a man possessing a capacity for improvement happens to receive an appointment as an assistant keeper, he is deterred from earnest efforts to fit himself for usefulness by the unstable tenure of his office. He knows that if the party that placed him in office is unsuccessful at the fall election, no amount of study or fidelity on his part will save him from being expelled, to make room for some hungry politician who has not a single qualification for the duties which he must discharge.

At the Albany penitentiary all political considerations have been rigidly excluded from the very beginning. No officer has ever in a single instance been appointed on any other ground than his personal fitness for the place, and no one has ever been removed on any other ground than his personal unfitness for it.

Satisfied that political influence and the uncertain tenure of office has been the bane of our prison system in the past, we have sought to devise a plan which would effectually secure the abolition of those influences for the future.

There was a period in the history of our State, when our prison system was superior to that of any other in the world. Pilgrims from various European countries came here to study the plans of prison discipline, which we had devised and put in operation; and their reports, which were published on their return to their respective homes, were couched in the language not only of approbation but of laudation.

This day has long since passed. The taught have become the teachers, and many of the prisons of Europe are now far in advance of ours in every element of usefulness and of reformatory influence.

With the exception of the law passed under the administration of Governor Seymour, by which a continuous course of good conduct on the part of the convict was made to earn a remission of a part of his sentence, and which has worked in the most beneficial manner, there has been no marked improvement in the principles or the administration of our prison system.

The last report of the prison association has been laid upon the desks of the members of the Convention, and it may be presumed that they have made themselves acquainted with the plan for the reformation of convicts known as the Irish system, and which it is therefore unnecessary for us to describe in detail.

While our system deals wholly in penalties, the Irish system judiciously mingles penalties with rewards.

Our system makes very little provision for the discipline of the will; the prisoners are placed under a rigid coercion, which excludes the exercise of their own volitions. The Irish system provides for the gradual culture of the volitions, by allowing them gradually to come into contact with temptations, by which their powers of self restraint are clearly manifested, both to themselves and to those who are placed over them.

Our system is rigidly uniform, the same food, raiment and lodging; the same privileges and punishments and privations are awarded alike to the young and the old, to the evil and the good, without any discrimination.

The present average earnings of the convicts *per capita* is about fifty-nine cents per day. The wages of men in similar employments outside of the prison is from one dollar and seventy-five cents to three dollars and fifty cents. The actual value of the convict's services to the contractors is fully two-thirds of what is given to workmen outside of the prison. The profits of the contractors are therefore enormous, as is shown by the great fortunes that they accumulate. These men, if skillfully managed and employed directly by the State, would be a source of profit to it, which at the most moderate computation would not be less than three hundred thousand dollars per annum, and at the same time it would guard effectually against those adverse influences to the reformation of the prisoner which always follow in the wake of the contractor and his agents.

In order to effect this most important object, it has seemed clear to us that the chief power of the prisons must be vested in a single head. It is only in this way that we can secure the unity of purpose, the firmness of will, the commercial intelligence, and the full responsibility which is essential for the prosecution of large manufacturing operations and for the profitable disposition of the manufactured articles.

The introduction of an improved system of rewards as well as punishments in our prisons, which has been inaugurated in Ireland, and which has proved there to be so beneficial, and the abolition of the contract system, which has proved

so disastrous to our prison discipline, alike depend upon the adoption of a single head for their government.

It is obviously impossible to remedy the abuses which we have shown to exist in the management of our common jails by constitutional provisions; it is only by legislative enactments that the minute provisions required for their reorganization can be safely supplied. But we have deemed it proper to provide by a constitutional sanction, that the superintendent of prisons shall have a general power of supervision over the jails and all other places for the custody of persons charged with the commission of crime or convicted of it; leaving it to the Legislature to ascertain what specific powers and duties shall be conferred upon him for the purpose of applying a remedy to existing evils.

We have carefully considered the resolution offered by Mr. Field, respecting the abolition of the death penalty which was referred to us by the Convention; and we are unanimously of the opinion that it is a subject which is entirely within the scope of legislative action, and without expressing any opinion respecting the expediency or in expediency of its abolition, we recommend that it shall not be included among the provisions of the Constitution.

The committee propose the following sections :

ARTICLE.

SECTION 1. There shall be one superintendent of prisons to be appointed by the Governor, by and with the advice and consent of the Senate, to hold his office for seven years. He shall have the charge and superintendence of the State prisons, and the supervision, with power of visitation, of all other places for the custody of persons charged with or convicted of crime. His compensation shall be fixed by law.

§ 2. There shall be one warden for each of the State prisons, to be appointed by the Governor, by and with the advice and consent of the Senate upon the recommendation of the superintendent of prisons, to hold office during good behavior; he shall appoint all the subordinate officers of his prison except the clerk, chaplain and physician, who shall be appointed by the superintendent of prisons.

§ 3. The superintendent of prisons shall possess such powers and perform such duties in respect to the county jails, the local or district penitentiaries, and other penal and reformatory institutions within the State, as the Legislature shall by law prescribe.

§ 4. The Legislature may provide for the appointment for each of the State prisons of a local board of visitors with powers and duties to be defined by law.

§ 5. A State superintendent of police shall be appointed by the Governor, by and with the advice and consent of the Senate, who shall hold his office for seven years, and who shall have the general direction and control of the police of the State.

§ 6. The Legislature shall divide the State into five police districts. It shall be the duty of the State superintendent of police to appoint an inspector in each of said districts. He shall also

subdivide each of said districts into five sub-districts, and appoint a sub-inspector for each, and may remove them for misconduct.

§ 7. In conformity with the provisions of the preceding sections, the Legislature shall provide by law for a general system of police, extending over the whole State, with a force proportioned to the necessities of each subdivision, and no other police force shall be organized except under its provisions.

§ 8. The Governor may remove the superintendent of prisons or the superintendent of police for malfeasance or misfeasance in office, after having furnished him with a copy of the charges against him, and giving him an opportunity of being heard in his defense; and in the mean time the Governor may suspend the one so charged from duty until said charges are determined. The superintendent of prisons may suspend the warden from office, and the Governor may remove them on the complaint of the superintendent, after

having been furnished with a copy of the charges against them, and giving them an opportunity to be heard in their defense.

JOHN STANTON GOULD,
Chairman.

M. LINDLEY LEE,
N. G. AXTELL.

I concur in recommending the adoption of the article reported, except those parts thereof requiring the appointment of the superintendents of prisons and police. I prefer that those officers should be elected by the people of the State.

ROBERT COCHRAN.

I concur mainly in the provisions of the article recommended, reserving right of exception to terms of office proposed, the legislative provision in regard to local boards of visitors, and the unmodified control over local police or its supersession by the State police.

A. B. CONGER.

STATISTICS.

COUNTIES.	Number of Indictments.	Number admitted to bail.	Number tried.	Number who confessed their guilt.	Amount of forfeited bail.	Amount paid to county treasurer.	Sentences suspended.	Number sentenced after suspension.
Albany.....	3,606	977	263	604	\$17,250	.....	.....	.....
Cayuga.....	704	183	135	139	4,000	\$1,510	9	.....
Chehang.....	737	No record	188	136	No record	.....	.....	.....
Cinton.....	309	213	199	98	17,550	.....	41	4
Columbia.....	264	308	55	84	6,180	.....	.....	.....
Covland.....	235	244	42	47	22,600	.....	.....	.....
Delaware.....	254	661	51	42	250	250	.....	.....
Dutchess.....	534	307	100	65	4,200	.....	.....	.....
Erie.....	2,137	981	1,408	677	.....	.....	.....	.....
Superior Court, Buffalo.....	1,355	698	.....	.....	109,180	.....	16	9
Franklin.....	157	523	23	97	4,200	1,080	42	.....
Genesee.....	450	260	106	123	4,200	1,905	12	12
Greene.....	125	92	47	81	7,050	.....	.....	.....
Hamilton.....	37	26	.....	.....	No return	No return	.....	.....
Herkimer.....	69	17	5	50	.....	.....	.....	.....
Jefferson.....	420	619	146	30	22,000	1,000	.....	.....
Lewis.....	124	115	31	12	67,600	250	2	2
Madison.....	449	728	37	124	67,600	.....	.....	.....
Monroe.....	1,304	No record	376	225	No report	.....	.....	.....
New York.....	12,251	12,504	3,112	4,728	427,080	22,912	1,284	121
Niagara.....	686	2,159	101	205	20,000	6,330	.....	.....
Oneida.....	1,038	223	222	154	16,850	.....	9	6
Orondaga.....	1,322	615	277	312	220,550	.....	24	.....
Ontario.....	535	442	118	107	No report	.....	.....	.....
Orange.....	464	458	102	238	No record	.....	37	1
Orleans.....	198	130	77	24	2,200	.....	.....	.....
Oswego.....	198	No report	127	75	.....	1,768	.....	.....
Otsego.....	266	245	52	12	9,180	.....	1	.....
Putnam.....	45	19	21	12	.....	.....	.....	.....
Queens.....	784	280	139	222	3,000	.....	18	.....
Saratoga.....	428	No record	92	136	No record	.....	.....	.....
Schuyler.....	166	125	29	23	4,200	500	.....	.....
Seneca.....	212	166	66	51	22,000	.....	.....	.....
Staten.....	497	2,601	129	141	31,630	.....	.....	.....
Suffolk.....	224	No record	155	47	No record	.....	.....	.....
Sullivan.....	124	156	42	6	22,150	.....	.....	.....
Tioga.....	393	922	59	118	24,050	.....	2	.....
Ulster.....	402	920	199	60	155,270	.....	.....	.....
Washington.....	516	225	53	156	6,200	.....	.....	.....
Warren.....	122	105	26	15	6,500	.....	4	2
Wayne.....	446	1,700	62	120	.....	.....	48	22
Yates.....	222	226	62	61	18,800	.....	12	6
Total.....	35,062	32,293	8,777	9,736	\$1,302,120	\$54,466	1,565	240

* For 1868 only.

+ No collections, except in 1865.

† No collections, except in 1865.

‡ Collections were only made in the years 1861, 1862, 1864, 1865 and 1866. § No collections, except in 1865.

ESTABLISHMENT OF A STATE POLICE.

The Legislature at its first session after the adoption of this Constitution shall provide by law for the organization of a State police force which shall be in lieu of city, county or district police departments now existing, under whatever name they may have been or are now known or designated. In the act so passed for the establishment of a State police force, the Legislature shall provide for a chief executive officer to be appointed by the Governor, by and with the advice and consent of the Senate, and the said chief executive officer shall have the general charge and disposition of the whole State police force. The chief executive officer and the chiefs of divisions as hereinafter provided for, shall hold their offices during good behavior, and shall only be removed on impeachment and trial by the Senate, the same as now provided by law for the impeachment and trial of county judges. They (the Legislature) shall by law divide the State into five divisions, as follows:

- First division.
- Second division.
- Third division.
- Fourth division.
- Fifth division.

Each division shall be under the charge of a chief of division, and shall be subdivided into five sections, and each section to be under the charge of a section inspector. The section inspectors shall form the staff of the chief of division, and the chief of staff to be designated by the chief of division shall possess all the powers, and perform the duties of chief of division in his necessary absence by reason of sickness or death, or in case of his removal and until his successor is appointed. The chiefs of division and section inspectors shall be nominated by the chief executive officer to the Governor, and if approved by him he shall, within ten days after the receipt of the same, send the names of the persons so approved to the Senate for confirmation or rejection.

If the persons so nominated are not approved by the Governor, or if they are rejected by the Senate, the chief executive officer shall immediately thereafter be notified thereof in writing, and he shall, within ten days after being so notified, nominate other persons to fill the offices of chiefs of divisions and section inspectors, and all vacancies in said offices shall be filled in like manner. Vacancies in either of said offices occurring during the recess of the Senate, may be filled by the chief executive officer, and the term of the officers so appointed shall expire at the end of the next session of the Senate. The men or privates composing the force hereby provided for shall, in all cities, be appointed by the mayor, on nomination to the board of aldermen of each city, and those for counties in which there are no cities, and for parts of counties other than cities, shall be appointed by the board of supervisors of each county. The mayor and common council of each city shall determine by ordinance the number of men to be appointed by the mayor and aldermen for said city, and the board of supervisors of each county shall in like manner determine the number of men to be appointed for each county or part of county other than cities.

Captains, lieutenants, sergeants and all inferior officers, shall be selected from among the privates, and be nominated by the mayors of cities and the presidents of boards of supervisors to the board of police, who may confirm or reject such nominations. In case of failure or neglect for ten days to make such nominations, the board of police shall proceed in like manner to select and appoint such officers the same as if they had been nominated as hereinbefore provided. The mayor and common council of each city and the board of supervisors of each county shall raise by tax a sufficient amount of money to pay the salaries of all the men appointed by them, and of all the officers below the grade of section inspectors, and also the amount of money that the board of police shall certify to them to be necessary to provide the necessary station-houses and to defray the incidental expenses in their respective cities and counties.

The chiefs of divisions shall convene a court in each section, of not less than three from amongst the highest grades in the section, one of whom shall be the section inspector, who shall be the presiding officer, twice in each week for the trial of members of the section below the grade of section inspector, and the said court shall report in writing the evidence so taken, their finding and sentence, which may extend to removal from office, to the chiefs of their respective divisions, and if approved by him the said judgment shall be final. The chief of division may disapprove of the finding or of the sentence, and may order a new trial or reduce the punishment. All charges against section inspectors shall be made to the chief executive officer and shall be tried before the board of police, and their finding and sentence in the case shall be final, but no sentence shall extend to removal from office unless two-thirds of the members of the board shall vote in favor thereof.

The Governor of the State, the Attorney-General of the State, the chief executive officer of the force herein provided for, and the chiefs of divisions, shall constitute a Board of State Police, and shall have power to prescribe rules and regulations for the government of the whole force and for the separate divisions thereof, and they shall meet as often, and at such places as the rules and regulations may prescribe, and the rules and regulations adopted by said board from time to time shall be binding on the whole police force. They may appoint a chief clerk of the board and fix his salary. He shall hold his office during good behavior, and shall be removed only in the manner provided for the trial and removal of section inspectors. He shall have the entire charge of the clerical business of the whole force, and of the several divisions thereof, and shall select from the policemen of the force such number of assistants as the board of police may determine necessary to assist him in the performance of his duty.

In cases of insurrection or violence by mobs, etc., the Governor of the State, mayors of cities, or presidents of boards of supervisors, shall notify the chief of the division in which it may occur thereof, and it shall be his duty to immediately proceed to the place where the same may occur, with the whole or any part of the force under him, as the exigencies of the service may require,

and use his utmost endeavors to suppress the same and arrest the offenders; and in case the force under him should be insufficient to enforce the laws, he may notify the chief executive officer, and call into service such regiments of the national guard of the State as he may deem necessary to aid him in the performance of his duty; and the national guard of the State, when thus called into service, shall be under the command of the chief executive officer, or, in his absence, of the chief of the division.

The chief executive officer shall have command of the whole police force of the State. The chiefs of divisions, subordinate thereto, shall have command of the whole police of their respective divisions. The chief executive officer shall select and detail from the force, in such manner as the board of police may determine, a State detective squad of not more than fifty men, who shall be under his immediate command, and the chiefs of divisions shall in like manner select and detail detective squads of their several divisions, and any member of the detective squads, or any member of the force who colludes with thieves or promises them immunity from punishment, or receives directly or indirectly any gratuity, present or reward from thieves shall be deemed to be guilty of felony, and the Legislature shall provide by law for the punishment thereof; and the returns, by any member of the force, of property stolen, to the owner thereof, without the arrest of the thief, shall be deemed to be *prima facie* evidence of such collusion, unless the party so charged shall prove that he came properly into the possession of such property in the discharge of his duty.

The Legislature shall provide by law for the incorporation of the several police departments of cities, counties and districts into the State force hereby created, and those holding offices as inspectors, surgeons, and all officers and privates below the grade of inspectors shall continue to hold their offices until removed as provided in this Constitution. All offices of commissioners and other offices of superior grade to inspectors shall become vacant immediately upon the organization of the State police force.

No person shall be competent to appointment in the State police force who is not a citizen of the United States and a resident of the State of New York for one year previous to the appointment, and who is not at the time in good bodily health, and who is not of good moral character, or who is not able to write intelligibly and speak easily the English language, and who does not understand the fundamental rules of arithmetic.

The chief executive officer and the chiefs of divisions shall have and possess all the powers now conferred by law upon the police justices of the city of New York.

The board of police shall appoint, in each division, such number of surgeons as the Legislature may direct.

The report was referred to the Committee of the Whole and ordered to be printed.

Mr. C. C. DWIGHT, from the same committee, submitted the following minority report:

SECTION 1. There shall be a board of managers of prisons, to consist of five persons to be ap-

pointed by the Governor, by and with the advice and consent of the Senate, who shall hold office for ten years, except that the five first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years; and vacancies in the office afterward occurring shall be filled in like manner.

§ 2. Such board shall have the charge and superintendence of the State prisons, and shall possess such powers and perform such duties in respect to the county jails, the local or district penitentiaries and other penal or reformatory institutions, within the State, as the Legislature may by law impose upon them.

§ 3. Such board shall from time to time elect one of their number secretary thereof, who shall perform such duties as the Legislature or the board may prescribe, and shall receive such salary as the Legislature shall determine. The remaining members of the board shall receive no compensation other than reasonable traveling and other expenses while engaged in the performance of official duty.

§ 4. Such board shall appoint the warden (or chief officer), the clerk, physician and chaplain of each State prison, and shall have power to remove either of such officers for cause only, after opportunity to be heard in his own defense, upon written charges. All other officers of each prison shall be appointed by the warden (or chief officer) thereof, and shall be removable at his pleasure.

Respectfully submitted.

CHARLES C. DWIGHT,

Of the Standing Committee on State Prisons.

Which was referred to the Committee of the Whole and ordered to be printed.

Mr. VAN CAMPEN—I ask leave of absence for myself for next week.

No objection being made, leave was granted.

Mr. FLAGLER—I ask indefinite leave of absence for Mr. Beadle.

No objection being made, leave was granted.

Mr. HISCOOK—I ask leave of absence for Mr. Corbett until next Wednesday.

No objection being made, leave was granted.

Mr. HISCOOK—I also ask leave of absence for myself for next week.

No objection being made, leave was granted.

Mr. C. E. PARKER—I ask leave of absence for Mr. Goodrich for next week.

No objection being made, leave was granted.

The PRESIDENT—The Chair desires to say he has received a note from Mr. Merrill, of Wyoming, who has suddenly been called home, and he asks indefinite leave of absence.

No objection being made, leave was granted.

Mr. MURPHY—Observing that there is no quorum, and knowing that the minds of the Convention are exercised in reference to the sad news we have heard [alluding to the report that Mr. R. U. Sherman, of Onida, had met with an accident], I move that the Convention do now adjourn.

The question was put on the motion of Mr. Murphy, and it was declared carried.

So the Convention adjourned till Monday, at seven o'clock P. M.

MONDAY, September 16, 1867.

The Convention met at seven o'clock P. M., pursuant to adjournment, the *PRDSIDENT pro tem.*, Mr. Folger, in the chair.

Prayer was offered by Rev. P. J. SMITH.

The Journal of Saturday was read by the *SECRETARY* and approved.

Mr. BELL presented a remonstrance of S. D. Hungerford and others, against the abolition of the Regents of the University.

Which was referred to the Committee of the Whole.

Mr. HOUTSTON presented a remonstrance of the trustees of Chester Academy on the same subject.

Which took the same reference.

Mr. CHESEBRO presented a remonstrance of Noah D. Clarke and the trustees of Canandaigua Academy, on the same subject.

Which took the same reference.

Mr. SMITH presented the remonstrance of the trustees of Johnstown Academy, on the same subject.

Which took the same reference.

Mr. BELL offered the following resolution:

Resolved, That hereafter this Convention will meet each day, Sundays excepted, at 9 A. M., take a recess from 2 P. M. to 4 P. M., and also from 6 P. M. to 7 P. M., except that on Mondays the morning session shall commence at 10 A. M., and that on Saturdays an adjournment shall be had for the day at 2 P. M.

Which was laid on the table.

Mr. BARTO offered the following resolution:

Resolved, That the Committee of the Whole having in charge the report of the Committee on Education be directed to report a section to the article upon education, as follows:

Sec. —. The Legislature shall not impose upon the people of the State for school purposes a greater tax in the aggregate than one-fourth mill upon the dollar in any one year.

Which was laid on the table.

The *PRESIDENT pro tem.* announced the unfinished business of the general orders to be the reports of the Committees on Finances of the State and on Canals.

Mr. ALVORD—The chairman of the Committee on Finance and the chairman of the Committee on Canals are both absent. So far as I am individually concerned, I have no objection to going on, but I think we had better wait till to-morrow morning, as there is no quorum present.

Mr. CLARKE—I move the Convention do now adjourn.

The question was put on the motion of Mr. Clarke, and declared lost, on a division, by a vote of 8 to 47.

SEVERAL DELEGATES—There was no quorum voting.

Mr. LEE—I move that the roll be called.

The *SECRETARY* proceeded to call the roll, when the following gentlemen answered to their names:

Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Artell, Barto, Beadle, Beckwith, Bell, Bickford, E. P. Brooks, E. A. Brown, Champlain, Chesebro, Clarke, Conger, Cooke, Corbett, Corning, Curtis, Daly, Duganne, C. C. Dwight, T. W.

Dwight, Ely, Farnum, Ferry, Folger, Fowler, Fuller, Graves, Greeley, Hadley, Hale, Hammond, Hand, Hardenburgh, Harris, Hatch, Hitchcock, Houston, Kinney, Landon, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merritt, Merwin, Miller, Monell, Morris, A. J. Parker, Rathbun, Reynolds, Root, Rumsey, Schoonmaker, Seaver, Sheldon, Smith, Spencer, S. Townsend, Van Cott, Verplanck, Wakeman, Wales, Young—69.

Mr. HAND—I move a call of the Convention.

Mr. ALVORD—I trust not. There is no probability of there being a quorum within the limits of the city, and a call of the Convention will only necessitate our remaining here during the entire night, because no one can come until morning other than those who are now here. I move, sir, that we do now adjourn.

Mr. GRAVES—Will the gentleman withdraw his motion for a moment?

Mr. ALVORD—I will withdraw it.

Mr. GRAVES—I think a quorum will be here in a few moments. Many members have come by the cars, who are just now taking their tea, and will be here in a short time.

Mr. HAND—I would inquire if the call of the Convention cannot be suspended at any time?

The *PRESIDENT pro tem.*—The Chair thinks it can.

Mr. GREELEY—I know that Mr. Field is in town, and several other gentlemen, and I think we ought not to take these snap judgments upon gentlemen.

Mr. DUGANNE—Is the motion amendable?

The *PRESIDENT pro tem.*—The Chair is of opinion it is not.

The question was then put on the motion of Mr. Hand, and it was declared lost.

Mr. DUGANNE—I move that the Convention take a recess for half an hour.

The *PRESIDENT pro tem.*—The Chair thinks that cannot be done without a quorum.

Mr. BELL—I respectfully suggest the propriety of sending the Sergeant-at-Arms, or other officer, to the nearest hotels and boarding-houses, to invite the members in.

Mr. ALVORD—I move that the Convention do now adjourn.

Mr. GREELEY—I call for the ayes and noes. A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the motion of Mr. Alvord, and it was declared lost by the following vote:

Ayes—Messrs. Alvord, Andrews, Clarke, Corning, Ferry, Folger, Fuller, Hadley, Harris, Hatch, Magee, Merwin, Rathbun, Smith, Spencer—15.

Noes—Messrs. A. F. Allen, C. L. Allen, Artell, Barto, Beadle, Beckwith, Bell, Bickford, E. P. Brooks, E. A. Brown, Champlain, Chesebro, Conger, Cooke, Corbett, Curtis, Daly, Duganne, C. C. Dwight, T. W. Dwight, Ely, Farnum, Fowler, Grant, Graves, Greeley, Hale, Hammond, Hand, Hardenburgh, Hitchcock, Houston, Kinney, Krum, Landon, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merritt, Miller, Monell, Morris, A. J. Parker, C. B. Parker, Prindle, Reynolds, Root, Rumsey, Schoonmaker, Seaver, Sheldon,

S. Townsend, Van Cott, Verplanck, Wakeman, Wales, Young—59.

Mr. ALVORD then moved a call of the Convention.

Mr. RUMSEY—I move that the Convention do now adjourn.

Mr. HAND—Is that motion in order?

The PRESIDENT *pro tem.*—It is in order, and takes precedence of the other motion.

Mr. BICKFORD—I call for the ayes and noes on the motion to adjourn.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the motion of Mr. Rumsey, and declared carried by the following vote:

Ayes—Messrs. C. L. Allen, Alvord, Andrews, Artell, Beadle, Bell, E. A. Brown, Cheesbro, Conger, Cooke, Corning, Daly, Ely, Folger, Fuller, Graves, Hadley, Hale, Hardenburgh, Harris, Hatch, Hitchcock, Houston, Krum, Ludington, Magee, Merwin, Monell, A. J. Parker, Prindle, Rathbun, Rumsey, Schoonmaker, Sheldon, Smith, Spencer, S. Townsend, Wakeman, Wales, Young—40.

Noes—Messrs. A. F. Allen, Barto, Beckwith, Bickford, E. P. Brooks, Champlain, Clarke, Corbett, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Farnum, Fowler, Grant, Greeley, Hammond, Hand, Kinney, A. Lawrence, M. H. Lawrence, Lea, McDonald, Morrill, Miller, Morris, C. E. Parker, Reynolds, Root, Soaver, Van Cott, Verplanck—33.

So the Convention adjourned.

TUESDAY, September 17, 1867.

The Convention met at nine o'clock, the PRESIDENT *pro tem.*, Mr. Folger, in the chair.

Prayer was offered by the Rev. AMBROSE O'NEILL.

The Journal of yesterday was read and approved.

Mr. ALVORD presented the remonstrance of trustees of Cortlandville Academy and citizens of Cortlandville, against abolishing the Board of Regents of the University.

Which was referred to the Committee of the Whole.

Mr. GREELEY—I present the remonstrance of W. W. Halley and others, of the Brooklyn Academy of Eclectic Medicine, against State interference with the practice of medicine. They ask that it may be read; but I will not ask it in the present state of our business, believing that there is no danger of any establishment of a system of orthodoxy in medicine. It has been proposed and talked about here, but a good many things are talked about that are never adopted. If it should ever be seriously pressed here, I shall ask for the reading of this most able and convincing memorial; but in that case only.

The memorial was referred to the Committee on Preamble and Bill of Rights.

Mr. GRAYES presented a remonstrance from the trustees, etc., of Cheshire Academy, Orange county, against the removal of the Regents of the University.

Which was referred to the Committee of the Whole.

Mr. GRANT presented a memorial from the board of trustees of Delaware Academy, against abolishing the Board of Regents of the University.

Which took the same reference.

Mr. ENDRESS presented the remonstrance of citizens of Livingston county, against any action adverse to the office of Regents of the University,

Which took the same reference.

Mr. KRUM presented the remonstrance of the Hon. William S. Clark and others, residents of the county of Schoharie, against the abolition of the Board of Regents of the University.

Which took the same reference.

Mr. SCHELL presented a remonstrance of the trustees, officers and instructors of the University of New York, on the same subject.

Which took the same reference.

Mr. FOLGER presented a remonstrance from the trustees and teachers of Naples Academy, on the same subject.

Which took the same reference.

Mr. CARPENTER presented a remonstrance from the faculty of trustees of St. Stephen's College, on the same subject.

Which took the same reference.

Mr. A. F. ALLEN—I ask for indefinite leave of absence for Mr. Barker.

There being no objection, leave was granted.

Mr. A. LAWRENCE—I ask for leave of absence for eight days after the session of to-morrow morning.

There being no objection, leave was granted.

Mr. GREELEY—I ask leave of absence for one week, after to-morrow morning's session.

Mr. ALVORD—I would like to know the reasons.

Mr. GREELEY—I have no objection to state them. In the full belief that we should conclude our labors before this time, I made engagements, which I cannot avoid now, to speak at two or three places. I would like a week from to-morrow, to fill those engagements.

There being no objection, leave was granted.

Mr. BELL—I ask for the consideration of the resolution which I offered last evening, in regard to the sessions of this Convention.

The SECRETARY read the resolution as follows:

Resolved, That this Convention will meet each day, Sundays excepted, at 9 A. M.; take a recess from 2 P. M. to 4 P. M., and also from 6 P. M. to 7 P. M., except that on Mondays the morning session shall commence at 10 A. M., and that on Saturdays an adjournment shall be had at 2 P. M.

Mr. ALVORD—I move to amend by striking out "two" and inserting "half-past one," and by striking out "seven" and inserting "half-past seven." Most of us dine precisely at two, and we have no time to go to our dinner, and hardly time to prepare for dinner; many of us having tea as late as a quarter before seven it is hard work to get here before half-past seven. I have to walk as rapidly as I can to get here at seven o'clock, taking tea at half past six.

Mr. BELL—The only object I had in view in offering that resolution was that we might hold more frequent sessions and, as far as possible, accomplish the purpose for which we are con-

vened. I should be willing that it should be so modified as to accommodate the greatest number. So far as my own convenience is concerned I would of course forget that. I understand that a large majority of the members of this Convention dine at from two to three o'clock. My resolution was intended to give us two hours near the middle of the day to wit—adjourn at two and re-assemble at four; then continuing on until six which would be two hours; adjourning for one hour and re-assemble at seven o'clock giving us one hour for tea. If the amendment of the gentleman from Onondaga [Mr. Alvord] suits a majority of the Convention better than the resolution I had the honor to offer, I have no objection. It seems to accomplish substantially the same purpose. It is a mere matter of convenience. I will not accept the amendment as yet, but would like to have a vote upon it in order to see which would accommodate the greatest number.

Mr. SMITH—I move to amend by substituting the word "twelve" for the word "two" in the latter part of the resolution. I make the motion because on Saturday there are several trains leaving between twelve and two which will accommodate many of the members; and if we make it two it would be an inconvenience.

Mr. ALVORD—I will ask from the mover of this resolution [Mr. Bell] whether it does not contemplate commencing our sessions on Monday morning.

Mr. BELL—Yes, sir.

Mr. ALVORD—It strikes me that the amendment of the gentleman from Fulton [Mr. Smith], ought not to be adopted, because, as a matter of course, if we make a different hour of adjournment on Saturday from the usual time, we shall fail to have any quorum whatever on Monday morning. The idea is to compel gentlemen, as much as possible, to remain within the city on Sundays for the balance of the session. I trust the resolution will prevail, for it is time, at least now, that we should get near the end of our labors; and we had better occupy all the time that we can devote to the objects for which we are called together. I trust that the gentleman will withdraw his amendment or that it will be voted down.

Mr. SMITH—If it would have the effect of keeping members here by adjourning at two o'clock I would consent to it. I would be willing to submit to any inconvenience on my own part for the purpose of hastening the business of this Convention; but from past experience I have no reason to believe that it would tend to insure a quorum or hasten our business; therefore I am in favor of adjourning at twelve o'clock instead of two.

Mr. SCHOONMAKER—It appears to me that we sit a sufficient number of hours now. I move to lay the whole subject on the table.

The question was put on the motion of Mr. Schoonmaker, and it was declared lost, on a division, by a vote of 35 to 42.

SEVERAL DELEGATES—There is not a quorum.

Mr. BECKWITH—I think there are some gentlemen present who did not vote. I, therefore call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was again put on the motion of Mr. Schoonmaker, and was declared lost by the following vote:

Ayes—Messrs. C. L. Allen, Barto, Bergen, E. Brooks, Cheesebro, Church, Clarke, Clinton, Colahan, Comstock, Conger, Corbett, Curtis, Daly, Ferry, Fuller, Gerry, Gross, Hale, Hatch, Hitchman, Mattice, Monell, More, Morris, A. J. Parker, Schell, Schoonmaker, Sheldon, Spencer, S. Townsend, Wickham, Young—33.

Noes—Messrs. A. F. Allen, Alvord, Andrews, Axtell, Beadle, Beckwith, Bell, Bickford, E. P. Brooks, E. A. Brown, Carpenter, Champplain, Cooke, C. C. Dwight, T. W. Dwight, Ely, Endress, Farnum, Folger, Fowler, Grant, Graves, Greeley, Hadley, Hammond, Hitchcock, Kinney, Krum, Landon, A. Lawrence, M. H. Lawrence, Lee, Ludington, Merritt, Merwin, Opdyke, C. E. Parker, Prindle, Reynolds, Root, Rumsey, Seaver, Smith, Stratton, Strong, M. I. Townsend, Van Cott, Verplanck, Wakeman, Wales—50.

The question recurring on the amendment of Mr. Smith, it was declared carried, on a division, by a vote of 52 to 26.

The question then recurred on the amendment of Mr. Alvord.

Mr. COOKE—I move to amend the amendment by striking out all after the words half-past four o'clock. The object of the amendment is to change our present evening session to an afternoon session; believing it will be more convenient and more agreeable to hold a morning and evening session, leaving the whole afternoon vacant. I believe, sir, that an eight hours' session in this hall is as much as can reasonably be required of us. I believe that we can do as much business satisfactorily in that way as we could by adding another session of two hours; and for that reason I offer this amendment.

Mr. ALVORD—If I understand correctly the amendment of the gentleman from Ulster [Mr. Cooke], it is to do away with the evening session. The result of that, sir, is to do away, in my opinion, with a large amount of time that can be conveniently and properly employed by this Convention in the transaction of business. If we meet from four o'clock in the afternoon until six there will be a general leaving on the part of members to go to tea, and a great many will not get back before eight or nine o'clock, if at all. If we meet at four and sit till six, we shall have two hours; meeting again at half-past seven o'clock, after getting our suppers, and being enabled to work as long as in our judgment and with our convenience it may be proper—adjourning at half past nine, ten or eleven o'clock, as the exigencies of the case may demand. It strikes me that the amendment of the gentleman from Ulster [Mr. Cooke] would virtually do away with the evening session.

Mr. COOKE—I think it is a mistaken idea to suppose that we can do more business by adding to the time that we spend here. It certainly is not useful to remain in this body continually debating and offering amendments in Committee of the Whole and acting upon them hastily, until we are not sure where we are. We want some little

time to look over and see what we have done, and what is to be done. I think we can save time by taking the evening to ourselves to digest and arrange a plan of action for the coming day. If this proposition is adopted, I think it will result in economy, and a saving of time, if we meet at nine o'clock in the morning and continue until two or half-past one, and then meet again at four and go on until seven or half-past seven. In that way we get our eight hours' session. I think the Convention would do well to consider this matter, and see whether anything is gained in the dispatch of business by taking up a continual session here.

Mr. BELL—I do not agree with the gentleman from Ulster [Mr. Cooke]. I think the resolution does not materially increase the labors of the members of this Convention. During most of the previous portions of our labors, the important committees at least have held meetings in the afternoon, thus occupying that portion of the day when we were not in session. Nearly all the committees have made their reports and are now at liberty to spend the time formerly occupied in the committee rooms, in this Convention; for that reason the operations of my resolution will not add materially to the labors of the members. There is another consideration, sir, why this resolution should be passed. It is, that the time approaches when we should bring our labors to a close; we have endeavored in various ways to limit debate, but we have not thus far succeeded. Members require a certain time to express themselves on the questions that are before the Convention. The only way we can give them that time is by holding more frequent sessions of the Convention. I do hope that every member who has a desire to make progress in this work will vote against the proposition of the gentleman from Ulster [Mr. Cooke].

Mr. MADLEY—I move the previous question. Mr. E. BROOKS—I would ask the gentleman to withdraw his motion for one moment. This hall has been pledged for two afternoons of the present week—one for railroad purposes and another to allow a gentleman from New York to address the Convention on the subject of a prohibitory law. I hope the gentleman will accept a modification of his resolution for these purposes.

Mr. BELL—By way of explanation, I would beg leave to occupy the time of the Convention for one moment. It did not occur to me when I offered this resolution that there were any such meetings to be held in this hall. If there were no other place in which they could meet, I should be unwilling to deprive them of the privilege of occupying this chamber. I would ask the gentleman from Richmond [Mr. E. Brooks] whether they could not as well meet in the Senate Chamber. If not, I would submit to the modification he proposes.

Mr. SCHOONMAKER—I would like to suggest to the gentleman to amend his resolution by providing that the Convention meet at 9 o'clock in the morning and hold a continuous session until 12 o'clock at night, adjourning fifteen minutes for dinner and fifteen minutes for supper. [Laughter.]

Mr. BELL—That is rather too extreme.

The question was put on the amendment of Mr. Cooke, and it was declared lost.

The question was announced on the amendment of Mr. Alvord.

Mr. BELL—The only difference between the two propositions is that one requires the Convention to meet at nine and adjourn at two; the other to meet at nine and adjourn at half-past one. In regard to the evening session, the difference is this: the one proposes to meet at four o'clock and adjourn at six, and then in the evening to meet at seven o'clock; while Mr. Alvord's amendment is to meet at half-past seven.

The question was put on the amendment of Alvord, and it was declared carried.

The question was then announced on the resolution as amended.

Mr. E. P. BROOKS—I offer the following amendment—

Mr. ALVORD—I rise to a point of order, that the previous question has been ordered.

The PRESIDENT *pro tem.*—The Chair understood the previous question to apply to but a single amendment.

Mr. E. P. BROOKS offered the following amendment:

Add at the end of the resolution, "and that this Convention will adjourn *sine die* on the 10th day of October next, at 12 M."

Mr. BICKFORD—I raise the question of order that that amendment is not germane.

The PRESIDENT *pro tem.* decided the point of order to be well taken.

The question was then put on the resolution as amended and was declared adopted.

Mr. BARTO—I offer the following resolution:

Resolved, That the Convention will hereafter assemble every day, except Sunday, at six o'clock A. M., and remain in session until twelve o'clock P. M., taking recess of one hour at two P. M., and of half an hour at six P. M.

Mr. KINNEY—I move to amend by striking out the words "taking a recess of one hour at two P. M."

Mr. ALVORD—I move that the proposition be laid on the table for the present.

The question was put on the motion of Mr. Alvord and it was declared carried.

The PRESIDENT *pro tem.* presented a communication from the Comptroller in answer to a resolution of the Convention.

Which was laid on the table and ordered to be printed.

The Convention again resolved itself into a Committee of the Whole, on the reports of the Committee on the Finances of the State and the Committee on Canals, Mr. SMITH, of Fulton, in the chair.

The pending question was announced to be on the adoption of the fourth section of the report of the Committee on Finances as amended.

Mr. CHURCH—I think those sections, as they are now amended, are capable of a construction entirely different from what the Convention intends. Now, sir, gentlemen who have not given—

Mr. VERPLANCK—I rise to a point of order. What is the question?

Mr. CHURCH—The question is on the adoption of the fourth section. Gentlemen who have not given this subject particular attention do not, perhaps, appreciate how difficult it is to prepare financial provisions, one after another consecutively, that will carry out a particular line of policy, so that no provision will come in conflict with another. It is very dangerous, to say the least of it, to attempt to amend and incorporate provisions in a financial article, in the hurry of a session, and in the excitement of debate. At some time, sir, I shall move to amend the sections that we have already passed upon, so as to carry out what I suppose to be the object of the Convention. I take it that no gentleman desires to leave this financial article in a loose, slipshod way, so that it may receive a construction which we did not desire it to have. I understand the Convention to have decided, substantially, that the canal debts proper, including the general fund debt, shall be paid by the appropriation of a given sum of money to a sinking fund, until they are provided for; that, during the time that these debts are being paid by the sinking fund, they propose to appropriate any surplus revenues there may be over and above the sinking fund to the improvement of the canals, or such other purposes as the Legislature may direct. Secondly—

Mr. ALVORD—I would inform the gentleman that he is mistaken in that last statement.

Mr. CHURCH—It is all the same improvement.

Mr. ALVORD—Or else to be paid into the canal sinking fund.

Mr. CHURCH—To be paid to improve the canals, and I should have said, into the sinking fund to pay the debt—that that appropriation of surplus revenues over and above the sinking fund, is confined to the period during which these debts are being paid or provided for. After the debts are paid or provided for it is then the wish of the Convention as determined by its votes the other evening, that the surplus revenues shall be returned to the treasury of the State, to pay for the advances which have been made to the canals or their debts by taxation, and leaving the moneys in the treasury of the State, without restricting the powers of the Legislature over them. Such I understand to be the desire of the Convention; and, so far as I am concerned, I repeat what I said the other evening, that I am entirely willing to acquiesce in that decision of the Convention. It will substantially preserve the principle of the report which the Finance Committee presented. But, sir, these sections have been amended, and a different construction may be placed upon them. By the amendment offered by the gentleman from Onondaga [Mr. Andrews] which, without another amendment to the fourth section, which has since been adopted, would have been, perhaps, well enough, it is provided "that the remainder of the revenues of the canals shall be appropriated," so and so. Now, the gentleman from Onondaga [Mr. Alvord] moved an amendment, which was adopted in the committee, to the fourth section, that after those debts were paid, the remaining revenues of the canals should be returned to the treasury to pay these advances, except as otherwise provided in this article. Now, sir, these words,

"except as otherwise provided in this article" ought not to be in this section. If these words are left in, it may be claimed that it is an implication, at least, that it is "otherwise provided" in the article that these moneys shall not be returned to the treasury of the State. If there is any construction which can be given to the whole article that these moneys may not be returned to the treasury it will be claimed that these words "except as otherwise provided in this article," were intended to except the construction that is thus claimed. For instance, it may be claimed that the provision in the amendment offered by the gentleman from Onondaga [Mr. Andrews] that the remainder of the revenues of the canals shall be appropriated to the improvement of the canals in connection with this exception which is incorporated in the fourth section, were intended to prevent the return of one dollar of these advances at any time to the treasury.

Mr. MURPHY—I would ask the gentleman whether the word "remaining" does not refer to the revenues which shall be received during the years when the \$2,418,000 are appropriated for the payment of it.

Mr. CHURCH—I think it does. I think, taking that section by itself as it now stands, that would be clearly the construction of it. The gentleman from Onondaga [Mr. Andrews] showed me this amendment before he offered it. I thought that was its true construction, and I think so now. But I am now talking about this amendment which has been made to the fourth section, "except as otherwise provided in this article the advances shall be returned to the treasury." Now, these words, "except as otherwise provided in this article," are mischievous here. If they mean anything at all, they mean that it is somewhere "otherwise provided in this article." The Convention does not intend, I apprehend, to provide in this article that these advances or any part of them shall not be returned to the treasury. On the contrary, by the action of the Convention, I understand that they have determined that the advances shall go into the treasury, but that the Legislature shall be left unrestricted as to the disposition of them after they are in. That I understand to be the design of the Convention. These words "except as otherwise provided in this article," if they have any meaning—and it is presumed that in a Constitution every word and every paragraph does have a meaning and was intended to have a meaning—should be left out of this section.

Mr. ANDREWS—Allow me to make another suggestion. If these remaining revenues are not applied to the construction, the closing provision of the section requires that they shall be applied on the canal debt sinking fund. Is not that another clear implication that the remaining revenues referred to are those which shall exist during the existence of the canal debt?

Mr. CHURCH—Undoubtedly the section standing by itself would receive that construction; but it says: "The remainder of the revenues of the canals shall be appropriated to the canal debt sinking fund." Then comes the clause that the remainder of the money shall be appropriated to the canals; and then, when you come to the

fourth section, and say, "except as otherwise provided in this article," it may be claimed that by a strict legal construction it was the intention of this Convention that no part of these revenues should go into the treasury of the State. There is always a class of people outside of the treasury who desire to get into it. We are making the Constitution as a barrier against them. Any possible construction which may be given to it for the purpose of thwarting the will of the people and of the Convention, will be given. It is not what we might say would be a strict legal construction if we were to sit down and decide it; but we desire to use language to which there can be but one construction put, and we should do it. Therefore, I repeat again that these words are out of place here, because the Convention does not mean to provide otherwise than that these moneys shall go into the treasury; and if they do not, then they should not put these words in. And then again, to pay "the amount of advances for canal purposes by taxation." There is no time specified and no amount. One or the other, or both, ought to be put in; and when the time comes I shall move an amendment that will supply that defect. I suppose the orderly way would be to move to reconsider the vote by which the words "except as otherwise provided in this article" were inserted. I move to reconsider that vote.

Mr. BECKWITH—May not that result be arrived at when we come into Convention by moving to strike it out?

Mr. CHURCH—I suppose so.

Mr. BECKWITH—I think that would be the better way.

Mr. RUMSEY—I think that those words that were inserted on the motion of the gentleman from Onondaga [Mr. Alvord] should be left there; and if they are not proper when the article is completed, the Committee on Revision will strike out whatever is inconsistent in it. We cannot tell until we have completed the article whether they are proper or improper words to be inserted.

Mr. CHURCH—The Committee on Revision have no power to strike out these words.

Mr. RUMSEY—They have power to strike out any words that have no meaning.

Mr. CHURCH—They have a meaning, and a very mischievous meaning.

Mr. ALVORD—The gentleman from Orleans [Mr. Church] has given a correct statement of what, in my judgment, was the intention of the Convention and the committee in reference to this matter. I, so far as I am individually concerned, should like to have that subject expressed in as clear language as possible. I have no objection whatever to the amendment of the gentleman from Kings [Mr. Murphy] for that purpose. My idea in regard to that was, sir, in the other direction from that of the gentleman from Orleans [Mr. Church]. I found the mischief in his proposition here in the fourth section, as connected with the second section; that, after the debts shall have been paid as provided for in the second section, we should be deprived, then, each and every year ("paid or provided for;" they are provided for in the sinking fund)—we should be deprived of the amount, under this fourth section, each and

every year that we are paying the amount over and above \$2,418,000 for the benefit of the canal. It was for the purpose of providing against that contingency that I moved this amendment. I think it is entirely proper, and I think it cannot in any way affect the idea suggested by the gentleman from Orleans [Mr. Church].

Mr. CHURCH—Will the gentleman allow me to make a suggestion? I understand the gentleman from Onondaga [Mr. Alvord] to say that, during the payment of the debts specified in section 1, the appropriation of the surplus is to be made to the canals or the sinking fund, and only during that time, and yet he fears that the fourth section as reported by the committee might take away some of that surplus.

Mr. ALVORD—Take away the whole of it.

Mr. CHURCH—Or the whole of it. Now, let me call his attention, and also the attention of every gentleman of the committee, to the clear and distinct language of the section, "After the debts specified in section No. 1 are fully paid or provided for." You cannot touch one dollar of the revenues to be returned into the treasury until the first section is fully satisfied, because this fourth section has no application until that time.

Mr. ALVORD—I do not so read it; I do not so understand it. I would very gladly and willingly accept, in lieu of my amendment, the amendment suggested by the gentleman from Kings [Mr. Murphy], instead of the reconsideration moved by the gentleman from Orleans [Mr. Church]. I will be satisfied with that, and I will consent that the sense of the committee may be taken on the proposition of the gentleman from Kings, with the understanding that the proposition I made is by that means overcome or taken out of the section. I desire nothing in this regard except that there shall be clearly expressed in the article that we have agreed to and unequivocally expressed. It does seem to me that with this understanding, without any further amendment, the matter might well go to the Committee on Revision, they understanding what the sense of this committee is. They can so accomplish it as to make it perfect in all its parts, and consistent with the understanding of the Convention. If gentlemen desire to correct it still further here, I have no objection whatever. I will withdraw my amendment for this purpose, and then we can go on with another section. I trust the gentleman from Orleans will consent to that.

Mr. MURPHY—I ask to be indulged by the committee for a minute. There is a difficulty which I think my friends overlook. The clause recites after the debts specified by section 2 are provided for, the remaining revenues of the canals, after paying expenses, etc., shall be paid into the treasury. Now, section two, as amended, provides for something else besides that.

Mr. CHURCH—That has been changed—it now refers to section 1.

Mr. MURPHY—I mean the section which now includes the amendment of the gentleman from Onondaga [Mr. Alvord]. That is section 2.

Mr. CHURCH—This has already been amended by striking out "two" and inserting "one"

Mr. MURPHY—Whether one or two you go-

on to provide for something more than the payment of the debts, namely the improvement of the canals by the revenues which may remain after paying \$2,418,000 annually toward the public debt.

Mr. CHURCH—What in?

Mr. MURPHY—In this fourth section as it stands you speak only of "debts." You say, "when the debts are paid, the remaining revenue shall be paid over," etc., "into the treasury."

Mr. CHURCH—Certainly.

Mr. MURPHY—All the revenues thus are to be paid into the treasury for general purposes, whereas we have already appropriated the annual surplus over \$2,418,000 for the improvement of the canals until 1878.

Mr. CHURCH—Certainly.

Mr. MURPHY—It appears to me the gentleman from Onondaga is right, that there shall be some provision in this section recognizing the appropriation made for the improvement of the canals until 1878.

Mr. CHURCH—The gentleman from Kings [Mr. Murphy] illustrates the remarks which I made a few moments ago, that it is entirely unsafe for gentlemen to sit down in hasty debate to make such financial provisions. Otherwise I am very sure my friend from Kings [Mr. Murphy] would never have given such a construction as he has expressed. Now, let us see how perfectly clear it is. The committee have proposed certain debts to be paid by a sinking fund of \$2,418,000; the surplus over that sum to be appropriated to the improvement of the canals or to the sinking fund.

Mr. MURPHY—No, not the payment of the debts.

Mr. CHURCH—Yes; if they do not use the money for the improvement of the canals it goes into the sinking fund and may be used for the payment of the debts.

Mr. MURPHY—Yes, sir.

Mr. CHURCH—And of course that is left to the Legislature; and that is done by the motion of the gentleman from Onondaga [Mr. Andrews]. Now, after the debts are paid or provided for, of course the revenues are released from the payment of the debts and then the whole revenues go into the treasury of the State.

Mr. MURPHY—Will the gentleman allow me an interruption?

Mr. CHURCH—Yes, sir.

Mr. MURPHY—As I understand the clause in the second section or in the amendment, to speak more definitely—of the gentleman from Onondaga [Mr. Andrews] it is, that this surplus in each year, after the payment of \$2,418,000, shall go to the improvement of the canals not if the Legislature shall direct—but as the Legislature shall direct—an imperative mandate upon the Legislature to appropriate these revenues to the improvement of the canals.

Mr. CHURCH—In that the gentleman is mistaken.

Mr. MURPHY—Well, it is as the Legislature shall direct.

Mr. CHURCH—We have appropriated them to the sinking fund and it makes no difference.

Mr. MURPHY—I think it does make all the difference in the world. We want to have these

thirteen looks doubled, and the wall-benches removed as soon as it can be done. That is the direction, as I understand of this Convention. It certainly is my idea, and I have so voted.

Mr. CHURCH—The gentleman takes the revenues and gives the Legislature full power over them. That is all there is about it. But the moment the debts are provided for in the second section in this article it is entirely without any force or power in any part. When it has provided for those debts it has performed its duties.

Mr. ALVORD—I will suggest to the gentleman from Orleans [Mr. Church] that we pass over this for the present and take up some other proposition. This section can go to the other committee, and they can prepare it so there will be no misunderstanding.

Mr. CHURCH—The provisions have been drawn with the greatest possible care.

Mr. OPDYKE—It seems to me the gentleman from Orleans [Mr. Church] is clearly right in his interpretation of this amendment, the reconsideration of which he asks. I think if gentlemen will calmly consider it, they will see clearly that the true interpretation of the section is that the appropriation of the surplus, after providing \$2,418,000 per annum for the sinking fund, shall go to the improvement of the canals, or, if the Legislature shall so order, it shall go to the sinking fund. If that interpretation be the true one, then section number 4 is right without the amendment of the gentleman from Onondaga [Mr. Alvord]. How does it read? "After the debts specified in section one are fully paid and provided for." Now this section does not take one dollar of this money until after these debts are paid or provided for. The gentleman from Onondaga declares that he does not intend the provision in section number 1 shall go beyond that period, nor does section number 4 go behind that period; it comes in at the moment those debts are paid, and then it takes the surplus and places it in the general fund to be used as the Legislature may direct. The language is clear; there is no conflict. But if you leave in the amendment of the gentleman from Onondaga which has already been adopted, and which we desire now to have reconsidered, it renders doubtful the interpretation of section number 1. I want to avoid that doubt, which we shall do by reconsidering and striking out the amendment. The two sections will not then conflict, nor will there be any possibility of mistaking their meaning. But leave in the amendment as it has been adopted and it renders the interpretation of that clause in section number 1 doubtful—a doubt which I hope this Convention will not put in the Constitution. I presume this Convention intends, and the gentleman from Onondaga declares that he intends, that this appropriation of the surplus to the improvement of the canals shall not extend beyond the period when the debts are paid. The section without the amendment provides what shall be done with the accruing revenue up to a given period. Section number 4 provides what shall be done with it thereafter. It is perfectly clear—clear as the English language can make it; but this amendment covers the whole matter with doubt.

Mr. McDONALD—It seems to me the question turns upon whether we have provided for the payment of the consolidated canal fund, amounting to twenty-one millions and some odd thousand dollars. Now, what have we done? We have provided a single fund, to be derived from the revenues of the canals, of \$2,418,000 yearly. The chairman of the Finance Committee admits that the canals will produce that under all hazards. We have, therefore, provided a fund which will pay that debt beyond all doubt. I claim in that way we have provided for that debt, and that "provided for" does not necessarily mean that the sinking fund accumulated enough to pay the amount. The controversy here is as to the meaning of the words "provided for." It is claimed that "provided for" may mean the providing a sinking fund, which, beyond all hazards, will pay the debt. It can have that meaning. Now, what is the proposition? The proposition is to strike out the words "except as otherwise provided in this article." Are these unnecessary words? In this Convention we differ about the meaning; there may be differences elsewhere. The few words in question determine what we mean. We mean that it shall be, after we have used the surplus revenues for the canals, whatever they may be up to the time this debt is paid. Here stand a few words. The chairman of the Finance Committee is fighting to keep them out. What for? Why does he want them out. If they settle the difference of opinion in this Convention they will settle that difference of opinion elsewhere; Why does the chairman of the Finance Committee move to strike these words out if they mean nothing?

Mr. RATHBUN—Because they should not be there.

Mr. McDONALD—They should be there, because in this Convention we differ as to the meaning of a few words. To illustrate further what the chairman of the Finance Committee wants is this: the present second member of the Committee on Canals is willing to leave this matter to the general understanding. But the chairman of the Finance Committee is not willing. Why not? Does he mean anything? or does he mean nothing? We know what he means. The Convention is perfectly satisfied about the meaning. Why does the Committee on Finance stand here and ask for a reconsideration, when the present chairman, the second member of the Committee on Canals is willing to yield all he claims? Why, if it means nothing? All I claim is this, that in this committee there is a difference as to the meaning of the words "provided for." I claim "provided for," may mean providing a sinking fund which beyond all hazards will finally pay the debt. They claim "provided for" must mean a sinking fund which has accumulated enough to pay the debt. To settle that difference we simply ask to insert "except as in this article otherwise provided." The chairman of the Finance Committee is striving to keep out these words. It seems to me the words can do no harm. They settle a question upon which, without them, we differ, and others may differ.

Mr. CHURCH—I would like to know for whom the gentleman from Ontario [Mr. McDonald] speaks when he says "we differ about what the words 'provided for' mean."

Mr. McDONALD—I speak for myself at least and I think for other members of the committee.

Mr. CHURCH—I apprehend there is no other gentleman in this Convention who is in doubt as to the meaning of the words "provided for."

Mr. McDONALD—It may be so, but I doubt it.

Mr. CHURCH—"Provided for" means after the debts are actually discharged or there is money sufficient in the sinking fund to pay them. If there is anybody but the gentleman from Ontario [Mr. McDonald] who supposes them to mean anything else, I should desire to have an amendment put in to make it perfectly plain. But, sir, it is an expression that is used in the Constitution of 1846, and has been repeatedly acted upon by the State officers, and can have but one meaning, that the sinking fund has accumulated enough to pay the debt which becomes due. The gentleman from Ontario [Mr. McDonald] asks me why I want these words stricken out. I want them out because they are not true. I do not mean to provide otherwise in this article than as expressed in section 4; but I am willing to say to the gentleman who represents the Canal Committee [Mr. Alvord] if he will consent to a reconsideration of the vote by which these words were inserted, I will pass this section over for a conference between him and myself with reference to it.

Mr. VERPLANCK—I shall object to it.

Mr. CHURCH—I was talking to the gentleman from Onondaga [Mr. Alvord]. I would like to know whether he consents.

Mr. ALVORD—I am entirely willing that this matter may be settled.

Mr. COMSTOCK—The words proposed by the gentleman from Onondaga, "except as herein provided," are of no sort of use in the section. The fourth section does not come into operation at all, no part or clause of it, until the force of the second section is entirely spent; in other words, until the debt is entirely paid. There is another difficulty about the fourth section which strikes my mind. Undoubtedly under the second section a certain surplus or remaining revenue can be appropriated for the improvement of the canals, and only that surplus. That section is entirely spent and gone whenever the debt is paid. That section contains no provision for any other purpose, and for improvements of the canals; for that we have to look to the fourth section, or else to the unrestrained power of the Legislature. It seems to me that the fourth section, as it is now drawn, has a plain implication that no part of the eighteen millions which is to be put into the treasury after the debt is paid, can be used in the improvement of the canals. I would like to inquire of the chairman of the Finance Committee whether there is or there is not an implication of that kind in the fourth section; in other words, whether the improvement is not suspended as soon as the existing debt on the canals is paid.

Mr. CHURCH—There is no restriction in this section upon the legislative power over these moneys after they get into the treasury.

Mr. COMSTOCK—Then what is the use of the fourth section at all? The language is, "the amount contributed for taxes shall be paid into

the treasury until the whole amount so advanced shall be refunded."

Mr. CHURCH—If the gentleman had been here the other evening, when we had a full discussion of this question, and it was determined in Convention to retain this section, he would have heard the views entertained by the Convention on this subject. That the pledge contained in the Constitution of 1846 shall be fulfilled, that these moneys shall be returned to the treasury so that the whole people of the State through the Legislature shall determine whether any, and if any, how much shall go to the canals, and how much shall go to some other purpose, or whether any part of it shall go to reduce the other debts of the State. It gives the whole people of the State an opportunity to claim these moneys which they have advanced by taxation, and does not prevent the Legislature from appropriating them again to canal purposes if they choose to do so.

Mr. COMSTOCK—It is not a question of what gentlemen may say or think of the question now; it is a question of what will be the interpretation hereafter. In my judgment, as now drawn, it carries a clear implication that no portion of that revenue can be devoted for the purposes of the canals, for improving them, until the \$18,000,000 is returned into the treasury. It is not so in the Constitution of 1846. That provision is drawn in very different language.

Mr. CHURCH—Will the gentleman allow me to make a suggestion?

Mr. COMSTOCK—Yes, sir.

Mr. CHURCH—I wish to suggest to the gentleman from Onondaga [Mr. Comstock] that the views he has now expressed are directly opposed to the argument he made the other night.

Mr. COMSTOCK—It is not so, because this section is drawn in different language. There they would be paid into the treasury for the general use of the State. This section is not so drawn. They are to be paid into the treasury until a certain \$18,000,000 is refunded. And then, according to the terms of the section, what comes after that is not to be paid into the treasury, but will be used for the purposes of the canals.

Mr. VERPLANCK—I am sorry the gentleman who has just taken his seat exposed quite so soon this plan to place the canal revenues where they cannot be used by the Legislature for the improvement of the canals. I therefore warn the friends of the canals in this Convention against the proposition of the gentleman from Orleans [Mr. Church], the chairman of the Finance Committee. The object of that gentleman is to place those revenues not only in the treasury but under such a provision of the Constitution that the inference will be that after the debt provided for in section 1 is paid, no money shall be appropriated for the use of the canals until the whole eighteen millions shall be returned to the treasury. That is the object and design, and I charge it directly upon the gentleman from Orleans. I trust the friends of the canal will not allow section 4 or any other section to this effect to be inserted in the Constitution.

Mr. CHURCH—I say, in the first place, this section bears no such construction.

Mr. VERPLANCK—The gentleman has said so a good many times.

Mr. CHURCH—I say, in the next place, no man, unless he is demented by canal water or lives in a locality depending upon canal influence for office, would claim that it is capable of any such construction. Look at it for one single moment. It requires that these advances shall be returned into the treasury of the State. The gentleman says none of them can be used until the whole eighteen millions are paid in. What is to prevent their being used? Suppose two millions are paid into the treasury of the State next year. Is there anything to prevent the Legislature from disposing of these two millions?

Mr. VERPLANCK—Not at all.

Mr. CHURCH—Not at all. The moment the money is in the treasury the Legislature has perfect power over it, and they can appropriate it to any purpose they see fit. And when the money is in the treasury, the whole people of the State can come forward and present their claims to it. I am willing in good faith to carry out what I understand to be the wishes of this Convention as expressed the other night, and as expressed by the gentleman from Onondaga this morning. But I must tell the gentleman from Erie [Mr. Verplanck] and other gentlemen, that if they suppose they can mutilate and mangle this report and subvert the provisions of the seventh article of the Constitution of 1846, and expect to choke it down this Convention, or the people of the State, they will find themselves greatly mistaken. Sir, if there is anything valuable in the Constitution of 1846, it is in the seventh article. If there is anything that the people of the State will rally around as one man it will be the vindication of the principles contained in that article. And no action of this Convention diluting, or mutilating these principles will ever receive the approbation of the people of the State. The gentleman might as well understand now as ever that there will be a contest if such be the result of the deliberations of this Convention—there will be a contest before the people whether we are to depart from all safe and sound financial principles or not.

Mr. VERPLANCK—The question before this committee is a very simple one. We have provided that until the debt we have named in section 1, a debt to which the Convention of 1846 pledged the canal revenues—twenty-four million and some hundred thousand of dollars should be yearly paid for the purpose of paying interest and decreasing the principal of that debt, until it is finally liquidated. I hope there will be a balance in the treasury over and above that amount for canal purposes. In a very few years the debt named in the first section will be paid, and this appropriation, therefore, of all the canal revenues, after paying \$2,400,000 is, by the proposition of the chairman of the Finance Committee, to cease when that debt is paid, and is to be returned to the treasury. The object and aim is to deprive the canals of any portion of the money so returned to the treasury. The Constitution is to provide that up to a certain time the surplus revenue shall go to canal improvements, and that at a certain time they shall not be devoted to the canals, but shall be paid into the treasury. It will then be claimed

that no part of these revenues can be used for canal improvements, because the Constitution, having provided that the surplus revenues should go to the canals until the debts mentioned in the first article of the report of the Committee on Finance as amended, are paid, and that after that time they are to be paid into the treasury to repay the treasury for advances for canal purposes by taxation since 1846, and that it would be wrong for the Legislature to give any part to the canals. This is the object of the gentleman. He may talk about my having "drank canal water" until I am "demented," but I can assure the gentleman that I see this matter pretty clearly, quite as clearly as if I was a candidate for the office of Governor, or any other political position. I occupy no partisan position in this Convention. When I came here I determined, having held a judicial position for fourteen years, not to meddle with politics. But politics have been brought here, and it is impossible to take part in the proceedings without feeling a little of the old leaven when politics are concerned. When the gentleman charges that I am demented from having drank so much of canal water, I must be excused if I say that some gentlemen are so wrapped up in politics that they cannot see what is really the true interest of the canals or of the people of the State. I wish to avoid the very thing suggested by my learned friend from Onondaga [Mr. Comstock]. I wish to avoid a decision by some court that because the surplus revenues of the canals were to be applied to canal improvements for a certain time, and after that time paid into the State treasury to repay advances for canal purposes since 1846, that it would be contrary to the true meaning of the Constitution to return them to the canals. I cannot, Mr. Chairman, give up my kindly feelings toward the gentleman from Orleans. We have long been friends, and although he may be blinded by political prejudices, I know that the gentleman is as honest as any man in this Convention. I regret that the gentleman from Ontario [Mr. Lapham], the other day, attempted to draw the line of distinction by saying that men who voted for certain propositions were not friends of the canals. I believe my friend, the chairman of the Finance Committee, is a friend of the canals of this State, but that he is mistaken in the means he would adopt to aid them. I think he has allowed himself to become so excited in reference to the debt of the State and its flighted faith, that he cannot clearly and truly see what the interests of the canals are. I hope, therefore, that the friends of the canals in this Convention will watch my friend from Orleans, and not be misled by his argument or his eloquence.

Mr. MURPHY—It is true there is a great misunderstanding on this floor. I made a suggestion when I last addressed the committee which I now propose to offer as an amendment. That is to strike out lines one and two of section 4 and insert the words "after the provisions of sections 1 and 2 are fully complied with," and strike out the amendment already adopted, "except as herein otherwise provided in this article." That will obviate the difficulty in the mind of the gentleman from Orleans [Mr. Church], and meet, I

think, the expectations of the gentleman on the other side of the house. I have no other desire in this matter than to carry out what I deem to be the sense of this Convention, as already manifested, and that is to pay the canal debts and appropriate the revenues in each year in excess of \$24,018,000, until 1878, to the improvement of the canals, and the payment of remaining revenues into the treasury of the State, to be disposed of in such manner as the Legislature shall direct.

Mr. GERRY—I rise to a question of order. The motion, as I understand it, is that of the gentleman from Orleans [Mr. Church] to reconsider the vote.

The CHAIRMAN—That was the motion. The question before the committee is on the motion for a reconsideration of the amendment of the gentleman from Onondaga.

Mr. RATHBUN—Is it in order to make any remarks in regard to the question pending?

The CHAIRMAN—It is.

Mr. RATHBUN—The gentleman from Erie [Mr. Verplanck] has called upon the committee to watch the gentleman from Orleans [Mr. Church] in regard to this question. I only hope they will watch him. I wish we had a good many more men like him who wanted watching. When I say watch I mean that we should be very careful that the report made by the Committee of Fifteen is not to be kicked and cuffed without some little consideration, that it be not amended by the spirit of intuition which men apply with great promptness and at all times, until we see whether the proper spirit is applied in the proper manner so as to preserve the important matters contained in it. If I recollect aright this is a section in the old Constitution of 1846. Two other sections were stricken out of the report by the Convention in order to obviate any objections whatever to this one section, and it was at the time substantially agreed that this section ought to be adopted. I supposed that was the end of the whole thing. But my friend from Onondaga having appropriated the surplus revenues of the canals from this day until the debt of \$21,000,000 is fully paid and satisfied as provided for, and the section having been incorporated into our work and passed by as finished, when this proposition came up he seemed to be afraid that this committee would go back and seize upon that portion of the revenue which, by common consent, had been given to the canals during the period necessary for the payment of the \$21,000,000. The gentleman from Onondaga [Mr. Alvord] seems to apprehend that this section is, by some legerdemain, to take hold of that part of the revenues and take them away. Now, rightly read, and as explained by the gentleman from Orleans [Mr. Church], it will be found that this section has no application to those revenues at all until that debt of \$21,000,000 is paid—fully paid or provided for. In the mean time the accruing surplus revenues are appropriated by this section already passed absolutely to the improvement of the canals, or to the sinking fund, if the Legislature should not see fit to apply it to the canals. Now, all these things can be readily read and understood, and

I apprehend from the explanation of the chairman of the Committee on Finance there is no trouble whatever in understanding them, but when the \$31,000,000 of debt is paid, then this section comes in and takes effect upon the surplus revenues of the canals and appropriates, or places, in other words, the whole of the surplus revenues of the canals in the treasury of the State from year to year. Now, when it is paid into the treasury of the State can anything be done with it? There have been arguments made here that nothing could be done with it until it is all paid in. Where does that idea come from? Not from the section, because that says nothing about it. There is not an intimation in the section as to how long it shall stay there, only how it shall be paid in. That it shall lie there and accumulate interest is not contained in the section.

Mr. VERPLANCK—The substance of the provision is, that when the \$31,000,000 debt is paid, the revenues of the canals shall be paid into the treasury, to repay the amount advanced for canal purposes since 1848. From this it will be inferred that the Legislature cannot use any part of the money for the benefit of the canals. What I wish is, to get rid of this inference.

Mr. RATHBUN—In reply to the gentleman from Erie [Mr. Verplanck], I will say that when the surplus canal revenues reach the treasury they are absolutely at the disposal of the Legislature for the benefit of the people. I undertake to say there is not a single particle of doubt about it; if the gentleman will read with the light given us by the argument of the committee, he will so find it. It is in language pertinent and proper to the object desired, and by careful reading it will be seen it lays its hands on the revenue after the \$31,000,000 debt is paid. Now, when the revenue reaches the treasury under that section does it come under the provision that it shall lie over? There is not a word to that effect and no pretense that when it reaches the treasury it has to go out in payment of the balance of the debt of the State for moneys advanced from taxation to the canals. When it does reach the treasury it is the property of the people, and to be disposed of by the Legislature. Now, if gentlemen want to secure this fund without an enlargement of the Erie canal, they have the right to do so, and that is the question now between the canal men, as they are called, on the one side, and the anti-canal men on the other side. The desire of one party is that this money shall, every dollar of it, go to the enlargement of the Erie canal, and that the Constitution shall so determine. If gentlemen want that, then they should vote for the proposition coming from the Canal Committee; if they desire to have the moneys left so that the Legislature may dispose of them under the direction and for the benefit of the people, then they must vote no such thing. If other objects grow up at the time these revenues come in, greater in importance than the canals, then the Legislature can, without any amendment to the Constitution, apply the funds to that greater object. But if we tie it up in the Constitution so it cannot be used for any purpose but the canals, then all other objects, no matter how important, must give way

unless an amendment to the Constitution is procured. Now it is simply these two propositions, the one reserving the funds of the people of the State subject to the disposal of the Legislature, and the other labeling and marking them, before they reach the treasury, as the funds for enlarging the canal. That is the whole question, and all the question there is in this case.

Mr. McDONALD—The fourth section as it now reads proposes further to pay the amount advanced for canal purposes by taxes specified in the first section. The section as it now stands has no reference to that whatever. That part of it has been stricken out.

Mr. RATHBUN—I understand that, and will explain it all if you will be kind enough to give me my time which I am allowed in this discussion.

Mr. McDONALD—The question is, what reference has that now to the part which has been stricken out?

Mr. RATHBUN—I cannot take time to answer that question. The gentleman has answered himself, and that is the way very often with gentlemen who do not know what they want. The section as it reads here is what I am talking about. It is, that the balance raised from taxation is to be paid into the treasury of the State, and that is all there is of it. My objection saying what I have said was not to control the disposition of that fund. It is not a matter of importance to me whether it be given to the canals absolutely now, or whether it go into the treasury and be at the disposition of the Legislature, to be applied as that body thinks right and proper. I take no part in that. I am neither a champion nor a pretended champion of the canals. I said all I had to say on the subject the other day. I desire that whatever is done on the canals shall be done openly and squarely and fairly, so every man shall understand its object and intent, and that is the wish of the Finance Committee. I want the Convention to understand that the object on the one hand is to keep this whole fund that is to come hereafter, as a fund for enlargement. If we want it to go into the treasury as the funds of the State, and not the fund for enlargement, all we have to do is to vote that we want the section just as it is and strike out the unnecessary and improper words introduced by the gentleman from Onondaga [Mr. Alvord]. It is not otherwise provided for. The funds have not been touched at all by anything done, and will not be by anything to be done, except it be to appropriate it for the use of the canals as fast as it reaches the treasury.

Mr. VERPLANCK—The only difference between the gentleman and myself is that he objects to having this fund marked "for the canals" and keeping them for that purpose. I object to placing this fund that in part should go to the canals in the treasury, marked "no part of this is for the canals." That is the whole difference. What I wish to avoid is the inference that will be urged and is properly drawn, from the fact that the Constitution gives the revenues of the canals for a certain purpose for a number of

years until the debt is paid and there stop and that after that time the Legislature cannot use any of these funds for canal purposes because the Constitution stops that provision when the debt is paid. I am afraid of this inference. If gentlemen are willing after these moneys are paid into the treasury, to consent that they may be used for any purpose that the Legislature shall direct, I have no objection. But I do not want them marked "not for canal purposes."

Mr. HARDENBURGH—I understand the difficulty of the gentleman from Erie [Mr. Verplanck] to be, that a construction may be so placed upon this article, as it has been framed by our committee that it will deprive our canals of any use of the funds until the whole \$18,000,000 are paid. That seems to be the difficulty. I would ask of any member of the Convention when \$1,400,000 of that \$18,000,000 is paid into the treasury, or a part of it, if that portion so paid into the treasury is not absolutely, to that extent, a payment to the people of so much of the \$18,000,000 due them? It is now paid back to the people; and what disposition shall be made of it? They can do just as they please with it. So with the next million, and so on until the whole \$18,000,000 is paid. It is an actual payment to the people of that claim, and the Legislature can do as it pleases with all the surplus revenues of the canals, in each year, over the sum of \$2,418,000. That is the whole scheme of our committee.

Mr. VERPLANCK—That is all I ask. I ask nothing more. I wish to have the Constitution so constructed. I know that courts are not always right. We all know that by the Constitution of 1846, city, county, and most of town officers are elected by the people. It was supposed that the people of such localities had the election of their officers. But a wise Legislature discovered that by making new geographical districts, they could get around this provision of the Constitution, and it was claimed that officers for such districts were not within the constitutional provision, and that such officers should be appointed by the Governor. The court of appeals sustained this assumption and a new class of officers in New York, Buffalo, and other cities were fastened upon the people. The better opinion to-day is that it was a mistake, yet it is the law, as declared by the court of last resort. What I propose is that we shall prevent an inference which will be fatal to the canals. I have said this so often that I should beg pardon of the committee for repeating it. It is so plain I hope gentlemen will understand it. It is now proposed to apply the canal revenues to the amount of \$2,400,000 to that portion of the State debt for which they are pledged, and which is represented by creditors. The balance of these revenues are given to the improvement of the canals, and if not used for that purpose they will go to the canal debt sinking fund, and in a few years that debt will be paid. Then the proposition is to put, not surplus revenues, but the whole revenues, after paying for collection and ordinary repairs, into the treasury. If the Legislature shall attempt to give any portion of these revenues to the canals it would be claimed before

the courts that the Constitution provided that the canals should have the surplus revenue for a certain time, and after that time to the treasury, to repay sums advanced to the canals by taxation; that it is therefore plain that it was intended to deprive the canals of any part of such revenues, and that they should be used to indemnify the people for the taxation to which they had been subjected and for no other purpose. No lawyer on this floor would hesitate to make such an argument before a court. It must be the design of my very ingenious friend from Orleans [Mr. Church] to place it in that position. All I ask is that when we have commenced to pay into the treasury, for the purpose of repaying these \$18,000,000 which have been advanced by taxation, that it shall not be claimed that it cannot be used except to repay this taxation which has been taken from the people. A single word to obviate this inference is all I ask of the committee. One word more. The gentleman from Orleans has told us repeatedly, almost as often as the gentleman from Westchester [Mr. Greeley] did, when the suffrage question was up, that this has been "very carefully considered by the committee." The committee did not draw this article with reference to this, but with reference to an entirely different state of things. They based their provision on the assumption that no difference was to be made in regard to the payment of the debt of \$18,000,000, and the rest of the debt for which the revenues were pledged.

Mr. FOLGER—I wish to ask the Chairman of the Finance Committee the question whether he accedes to the interpretation of this matter given by the gentleman from Cayuga, [Mr. Rathbun]. As I understood the gentleman from Cayuga, he said that this section draws the line between those who would give the surplus revenues of the canal for the improvement of the canal, and those who would give them to the general purposes of the State. Those who vote for the reconsideration as I understood him, will vote to give these revenues to the general purposes of the State; and those who vote against it will vote to retain them for the improvement of the canals. Does the gentleman from Orleans accede to that interpretation?

Mr. CHURCH—I did not understand that to be the statement.

Mr. FOLGER—It understood him to state it as boldly as that.

Mr. RATHBUN—What I intended to say was this; that gentlemen who are understood to be friends and champions of the canals, desire the whole fund to be a canal fund; while another portion desire it to go into the general fund as the property of the State; and should any extraordinary occasion arise which may require a part of these funds, more important than the improvement of the canals, they desire that the fund shall not be so disposed of that it cannot be available for that purpose, but that it may be left to the discretion of the Legislature to make such application of that fund as in their judgment will be right. That was what I intended to say.

Mr. CHURCH—In answer to the gentleman from Ontario [Mr. Folger], I will say that it seems to me the construction of that section is very clear.

It neither appropriates it to the canal or to any other purpose, but leaves the Legislature to appropriate it to any purpose which they see fit. That is my understanding of the section. I have only a word or two more to say about this question; and in the first place with reference to the gentleman from Erie [Mr. Verplanck]. He knows very well that I desire no personal controversy with him. I can reciprocate most fully the expressions of respect and esteem which he has expressed toward myself. But when he accuses me of an attempt to deceive the Convention, he must suppose that I am made of entirely different material from what I am, if I do not resent it. I beg to assure that gentleman and all others that I am no candidate for office, and that I have no political object in view. I have labored for the last three months as hard as I ever worked in my life, discharging my duties as a member of this Convention, and I have performed this labor with no other object under Heaven than to secure a good, sound, safe financial article in our Constitution. I desire all gentlemen to watch me with the utmost scrutiny; and all I ask is that they will do it in the spirit of fairness and not in the spirit of partisanship; and I do not now speak of political partisanship, because there are canal partisans as well as political partisans. I ask gentlemen to scrutinize this report in the spirit of fairness, and if it is their judgment that it should be voted down, so be it. There is another tribunal, thank God, before whom I will appear and vindicate that report. Now, sir, I wish to say with reference to this section, that I am perfectly willing to concede what I understand the gentleman from Erie to desire, and that is that the moneys to be returned to the treasury may be under the power of the Legislature, without specifying anything. That is the legal effect of it, and the only construction that can be given to it. With reference to the amendment proposed by the gentleman from Kings [Mr. Murphy], it may be that that amendment would be satisfactory to me. I would like to examine the amendment carefully and see whether it will carry out the purposes which we all profess to entertain. I renew my suggestion to reconsider the vote by which these words were stricken out, and let this section be passed over, and I am perfectly willing, in the spirit of fairness, to act with any gentleman in this Convention, with a view to so arrange the section as to carry out the objects which we all profess in entire good faith. But I do not desire that gentlemen shall put in words here and words there, without looking to see their bearing upon the article, without our having an opportunity to examine them. If the gentlemen will consent to that I am perfectly willing to put in the words which the gentleman from Erie says he will be satisfied with, if I understand what he says.

Mr. HAND—What is the question before the Convention?

The CHAIRMAN—It is the motion to reconsider.

Mr. HAND—They have not talked about that for the last half hour, and I did not know but it was something else. They have talked about what should be done with the money when the

canal debt proper should be paid; and I did not know but I had been mistaken in the question before us. It seems to me that this whole matter may be very easily settled. Suppose, after providing for the payment of the money into the treasury, after the canal debt proper shall be paid, you add these words: "to be used for such purposes as the Legislature may direct," and leave it so. That will settle the whole controversy, and I propose that that be done.

Mr. CHURCH—I have said that I am perfectly willing to accede to that; but there are other provisions—

Mr. HAND—I will tell you how this thing strikes me. It looks like child's play to take the canal revenues and pay them into the treasury, to be in the same year paid out again for those canals, and the natural inference is that they are not to be paid to the canals. If so why draw them from your sinking fund, to be paid out again immediately? We are to take the words of this Constitution as they stand in the book, without reference to agreements made by leaders here, or the spirit of this discussion, or the sentiments advanced here; but we are to interpret that instrument by its words. This is a debt the canal owes to the people of the State of New York, for moneys advanced by taxation. It is ordered that this be paid out of the canal revenues, into the funds of the State. The natural inference, it seems to me, would be that this money was not to be used for the benefit of the canals; for if it was, why take it from the canal fund and put it into the treasury, and then put it back again? It seems to me that the natural inference would be that they were to be used for some other purpose; but these three or four simple words would give it a direct interpretation, so that these funds could be used for any purpose whatever, that the Legislature might choose to direct.

Mr. ALVORD—I fully appreciate the position of the gentleman from Orleans [Mr. Church] with regard to this matter, because it is my position. I desire here not to act as a partisan in any sense of the word. I desire that a good financial article may be submitted to the people of this State, and I trust that it will be so drawn that the gentleman from Orleans and myself will both be found advocating its adoption before the people. I desire also that gentlemen who are made members of committees here, and who have devoted great care and attention to the examination of matters placed in their charge, should be gratified, so far as consistent with the judgment of the Convention, by passing these matters in the same form in which the committees report them. For myself I do not presume that I have more wisdom than the other members of the Convention, and that, therefore, as a matter of necessity they should all bow down to me. I am willing they should round the corners and extract some of the matter I may present them as a member of a committee, if in their judgment, looking at it calmly and considerately, they form a different judgment from that which I arrive at. In regard to this fourth section it is liable to the interpretation put upon it by the

gentleman from Erie [Mr. Verplanck]; and any man who reads it carefully, in connection with that idea, can see it clearly and conclusively. Where are the revenues of the canals to go after you pay this debt? What place is there for them? The only place is the treasury. What necessity, therefore, for going on and specifying that they shall go into the treasury for certain specific purposes until a certain time? What becomes of them after that has been performed? The Constitution says nothing about that. There is no place for them to go except the State treasury; and therefore I say, so far as that is concerned, that there it should stop. After the debts of the canals shall have been paid, as contemplated by the second section, then the amount shall be paid into the State treasury for the disposal of the Legislature, to do whatsoever they see fit to do with them. The implication seems to me so clear and plain that no lawyer here can doubt it, that they shall not be diverted to the canals again but shall be taken for some other purpose than the canals.

Mr. FOLGER—Will the gentleman read the fifth section?

Mr. ALVORD—The fifth section is stricken out.

Mr. FOLGER—The fifth section of the Finance Committee's report. That is not stricken out.

Mr. ALVORD—I understood the gentleman from Orleans [Mr. Church] to consent that the fifth section should be stricken out.

Mr. CHURCH—No, sir; I did not consent to that at all. That is necessary in order to give effect to the former sections.

Mr. TILDEN—The sixth section is stricken out.

Mr. ALVORD—The fifth section makes still stronger the position I take with regard to it.

Mr. FOLGER—Will the gentleman please read it, so that we can have it before our minds while he is discussing it?

Mr. ALVORD—By the fourth section these moneys are to be paid year by year into the treasury until the whole of the \$18,000,000 are paid, together with interest at five per cent. Then the fifth section is:

"After complying with the provisions of the third and fourth sections of this article, and after paying said expenses of collection, superintendence and ordinary repairs, the surplus revenues of the canals shall, in each fiscal year, be disposed of for the improvement of the canals, or in such other manner as the Legislature may direct, but shall, at no time, be anticipated or pledged."

Mr. FOLGER—Will the gentleman allow me a word? Section 4 provides that the canal revenues shall be applied to the payment of the debts named in section 1. Section 1, as amended by this committee, names only those debts which we all agree should be charged to the canals, to wit, the debts of \$21,000,000. That is what section 4 provides, as it now stands, after section 1 has been amended. Then section 5 provides that after the \$21,000,000 has been paid, with interest at five per cent, and after all other advances for canal

purposes have been paid, with five per cent interest, then the surplus of canal revenues remaining in the treasury, shall be appropriated by the Legislature to the improvement of the canals, or to such other purposes as the Legislature may see fit.

Mr. HAND—I ask if that fifth section does not provide that the \$18,000,000 shall be paid before such appropriation can take place?

Mr. FOLGER—No, sir; because this committee has stricken out from the first section the \$18,000,000, and put its hand upon it and said it should not be considered a part of the canal debt; but the canal debt for which the canal revenues should be pledged should be \$21,000,000.

Mr. HAND—Does not the fourth section anticipate that the \$18,000,000 shall be paid into the treasury?

Mr. ALVORD—I believe I am entitled to the floor.

The CHAIRMAN—Does the gentleman from Onondaga [Mr. Alvord] yield to the gentleman from Broome [Mr. Hand]?

Mr. ALVORD—I do not yield to anybody.

The CHAIRMAN—The gentleman from Onondaga will proceed.

Mr. ALVORD—The fourth section reads now that "after the debts specified in section 1 are fully paid or provided for, according to the provisions of section 2, the remaining revenues of the canals, after paying the said expenses of collection, superintendence and ordinary repairs, shall, in each fiscal year, be paid into the treasury of the State to pay the amount advanced for canal purposes by taxation"—

Mr. BICKFORD—That is stricken out.

Mr. ALVORD—No, sir; that is not stricken out.

Mr. FOLGER—"To pay the amount specified in the first section, and the interest thereon," is that in?

Mr. ALVORD—No, sir; that is stricken out. That is where the gentleman is mistaken.

Mr. FOLGER—If that is stricken out I am mistaken.

The CHAIRMAN—The Clerk will read the section for the information of the committee.

The SECRETARY again read the section.

Mr. ALVORD—I believe it is now understood that I am right. The position I take in regard to this matter is that the fifth section requires that until the entire amount is finally paid into the treasury of the State, the funds cannot be diverted and used for canal purposes. There is no sort of question with regard to it; and no man can stand here as a lawyer and hesitate as to the import of the section.

Mr. BICKFORD—Will it not be time enough to debate the fifth section when we come to it? We are not going to adopt that fifth section.

Mr. ALVORD—I do not know what we shall adopt or shall not adopt. I understood distinctly the other day that the gentleman from Orleans [Mr. Church] consented to the striking out of both the fifth and sixth sections of this article; but to-day he says he is not going to do it. I therefore propose to meet this matter on the threshold, and see whether or no we shall have this matter tied up for all time to come, so far as

the canals are concerned, or until the \$18,000,000 are paid. There is no other construction to the fifth section, but an absolute obligation on the part of the Legislature of the State not to appropriate the revenues of the canals until every dollar of the \$18,000,000 is paid; so that if in 1878 you shall have paid the entire amount of indebtedness on the part of the canals, you have got to wait five, six or seven years more until the \$18,000,000 are paid, before you can put a single cent into the canals of the moneys thus paid into the treasury of the State. I am opposed to that, and for that reason I would look carefully at this matter, from beginning to end, as we go along. I am distinctly and decidedly in favor of leaving this question as we have done, that \$2,418,000 shall be paid in each and every year into the sinking fund to take care of the indebtedness of the State and protect the public creditor, and that the surplus over and above that paid into the treasury, "may" be appropriated, not "shall" be appropriated to the improvement of the canals. After the moneys proceeding from the revenues of the canals shall thus have been taken care of, after the payment of the expenses of collection, superintendence and ordinary repairs, then I would leave the question to the people of the State through the Legislature to do whatever they may see fit with those revenues which shall have thus gone into the treasury—not until the \$18,000,000 are paid, but so long as they shall see fit to live under the Constitution—that the moneys shall go into the treasury, and after they are there shall be devoted to the building of the Capitol or of railroads, or anything else the State may desire; if they desire anything else more than the improvement of the canals, placing the canals, the railroads, the Capitol, and every other interest of the State on the same platform and on the same basis. But as it is here, while you are raising the \$18,000,000 this is accumulating and cannot be used for the canals; and that is what I am opposed to. I trust, so far as this matter is concerned, there will be an amendment by means of which that provision of the article, in whatever shape it may come before the Convention, will be so altered as to carry out fully the view which I have expressed.

Mr. FOLGER—I wish to ask the gentleman from Onondaga [Mr. Alvord] one question. The question before the Convention, as I understand it, is upon the motion to reconsider the vote by which the motion was adopted to insert the words "or not otherwise provided." Where is it in this section that there are appropriations provided for in this article so far as we have gone?

Mr. ALVORD—I am under the impression, and I am free to acknowledge, that I have been over scrupulous in my idea of the application of that section. I had reference to the facts that there was a surplus fund provided, and that it was the wish of the Convention that that should be applied to purposes of canal improvement if the Legislature saw fit, and I had the idea that the section left as it was might cut that off. I am rather inclined to believe that I am mistaken so far as that matter is concerned. Upon looking at it more carefully and critically, I think it would not have that effect.

Mr. FOLGER—Would not the restoration of the words "specified in the first section," in the fourth section, meet the views of the gentleman from Onondaga?

Mr. ALVORD—Where would you put them in?

Mr. FOLGER—Where they were stricken out; in lines six or seven.

Mr. ALVORD—There is nothing of the kind now in the first section as it stands.

Mr. FOLGER—The debt of \$21,000,000 is there.

Mr. ALVORD—But this is the debt of \$18,000,000.

Mr. FOLGER—I take advantage of being upon the floor for a moment, to say that my canal policy is this: that the canal earnings, after paying the debt which ought to be paid, and which the people are now bound to the public creditor to pay, and which I understand that the revenues of the canal are pledged to pay, shall be devoted to the improvement of the canals, to be used in the discretion of the Legislature for that purpose. But I am opposed to the incurring of any debt or making any loan, secured by a pledge of canal revenue. There may some exigencies arise when there may be a more important object to which these revenues may be diverted. But until such do arise, the earnings of the canals, the surplus revenue should go to improve the canals. The discussion, it seems to me, has brought us to that point; that all parties are willing that this Constitution shall direct that these debts, properly chargeable to the revenues of the canals, shall be paid and fully liquidated, together with the interest upon them; and after that, that the surplus revenues shall be paid into the treasury subject to the power of the Legislature, to appropriate them to the improvement of the canals. All we are groping for is some form of words—some succinct expression which will provide for that end.

Mr. ALVORD—Will the gentleman permit me to ask him a question?

Mr. FOLGER—Certainly.

Mr. ALVORD—I will ask him if he has listened to this discussion as a lawyer, whether or not, taking the latter part of the section as reported by the committee, together with the fifth section that follows, or even without the fifth section, it does not entirely, by implication, so far as its language is concerned, before the moneys paid by taxation have all been paid in, prevent their being appropriated for canal purposes?

Mr. FOLGER—It might, perhaps, be so construed; and it is best to guard against such construction. With the words "specified in the first section and interest thereon" stricken out, such might be the effect. The advances here named, whether an existing debt or paid by taxation, would have to come out of the revenues, before any surplus could be applied to the improvement of the canal.

Mr. MERRITT—If I understand this proposition I am in favor of it; that we shall recognize the advance of \$18,000,000; but I would not tie it up by the Constitution, so that all the surplus revenues should go into the general fund until the whole amount shall have been paid back; but such amounts should be allowed as a credit, and should go to balance the \$18,000,000 with inter-

est at five per cent, or such amount as we may see fit to state, for the purpose of recognizing the principle in the Constitution of 1846. It is well that the people should understand what they have paid toward the canal, and what is due them from the canals in return; and, so far as it may be, returned to the treasury after having paid the outstanding debts and the accumulated interest, that they shall dispose of such surplus from time to time as they may see fit and proper. Such an amendment as that, I am ready to support. I am not in favor of striking out all reference to the advances already made. I speak the sentiments of tax payers who are not directly on the line of the canal, when I say that we all desire and hope that the canals will be made as good as they can be, for the general interests of the commerce of this State and of the West. But the people should understand exactly how much they are indebted to the canal by way of benefits, and exactly how much the canal owes them. That is my position on this question now. Let us be honest with the people and make an honest statement of the account.

Mr. TILDEN—I think it quite clear that the amendment of the gentleman from Onondaga to this section has no distinct or exact connection with anything contained in it, and is likely to create uncertainty and confusion. I think, therefore, it would better be reconsidered and stricken out. I think the English language will afford phraseology, clear, distinct and artistic enough to carry out the purposes of this committee and of the Convention, and that we shall at last find the fit language to express our ideas. The other day I stated my theory upon this subject; which is that, on the one hand, while allowing all surplus revenues during the period when the appropriation is made for the sinking fund, and until the debt is fully paid, to be applied to the canals for their improvement; and, on the other hand, that while recognizing the liability of the canals to the people of this State for advances, it would not be good policy, or wise policy, to anticipate the future disposition of these funds, and to tie them up any further than we tied them up by the Constitution of 1846. That has been my idea and my policy, as I stated several days ago, during the whole time this subject has been under consideration. Gentlemen call themselves friends of the canal, but I do not think they are as much friends of the canals as we are, or at least as I am. It was a remarkable and singular fact that a gentleman who assumed, in a somewhat peculiar and invidious and discriminating manner, to characterize himself and those who followed him, as friends of the canals; when he read his roll-call he rallied to his side but thirty-six members of this Convention. And whatever the canals may have on any former occasion suffered from his hostility, or the hostility, of any gentleman associated with him, they never had so much occasion to cry for mercy, as when they suffered his friendship and advocacy. I think we who stand here to-day and give the canals every reasonable support and protection and improvement, and keep them clear from any wild and chimerical and frivolous schemes of projectors, are their true friends

and their only true friends. I judge from the course of this discussion that there is very little difference of opinion among us in regard to this provision, that what we are willing to take on the one side is that which gentlemen seek or profess to seek to obtain on the other. I am quite content to leave the eighteen millions, when it shall have been gathered, or any part of it gathered, into the public treasury, to the free and full discretion of the legislative body at that time to dispose of. I do not think it would be wise to-day to say that amount shall be applied to the improvement of the canals, because it may not be necessary. I do not think it would be well to create any inference whatever which shall prejudice the action of legislative bodies in applying the money to that purpose, if there should then be occasion or which shall call for them to apply for such a purpose any unappropriated funds in the treasury of the State. I think all wisdom will not die with us. I think we cannot venture to foresee and predetermine what shall be done with the public funds at so remote a period. In order that we may have an opportunity to consider these various amendments which have been proposed to reach the object which certainly many of us have in common, I think it will be wise that we should open this question by a reconsideration of the vote on this motion to amend by the gentleman from Onondaga [Mr. Alvord].

Mr. VERPLANCK—A single word. I suppose when the gentleman says "we" and "they" by "we" he means the gentlemen who are sustaining the Finance Committee's report. In the same breath he says, "we are the true friends of the canals;" thus leaving it to be inferred that the gentlemen who do not think as they do are not the true friends of the canal. What was it that the Finance Committee and their champion, my friend from New York [Mr. Tilden], proposed in the finance report?

Mr. TILDEN—I suppose the gentleman is aware that I was confined by illness and did not attend the sessions of the Finance Committee and am in no manner whatsoever committed upon that subject, and have not been.

Mr. VERPLANCK—I placed this gentleman where he put himself. Further than that I know nothing on the subject. The report of the Finance Committee proposed to pledge the revenues of the canals, in the first place, for \$39,414,971.90, made up of what they called the old canal debt, the general fund debt, the canal debt of 1854, the floating canal debt and the advances to the canals since 1846, making the amount I have stated. Then they state that the bounty debt is \$26,914,000 and the contingent debt \$218,000, thus making over \$66,000,000, for which they proposed to pledge the entire revenues of the canals after paying for the collection of the revenues and the ordinary repairs. I offered an amendment to that section by which I proposed to strike out from the statement that the canal revenues are now pledged to the amount of \$39,000,000—the amount of \$18,007,289.68, because that was simply an advance that the State had made by taxation, and by a

very handsome majority the amendment was carried. In passing, allow me to say that this amount was never the Erie canal debt. This was the debt of the other canals, and the desire to cherish and sustain the paying canals, with other reasons, induced the committee to strike out this amount from the amount for which it was stated the canal revenues were pledged. This being stricken out, my friend from Onondaga [Mr. Andrews] introduced a resolution which received the approval of this committee. After that had been adopted I ventured to propose another amendment, and that amendment was lost by the vote to which the learned gentleman from New York referred in such terms as he was pleased to use.

Mr. TILDEN—I did not allude to that gentleman at all, but to another gentleman who called the roll [Mr. Lapham].

Mr. VERPLANCK—It was upon my amendment.

Mr. TILDEN—I take this occasion to say to the gentleman from Erie [Mr. Verplanck] that, so far as I am concerned, at no time whatever have I countenanced this idea of tying up this eighteen millions, either for the canals or against the canals.

Mr. VERPLANCK—I am not stating this question with a view of convicting the gentleman from New York [Mr. Tilden] of being for or against any particular policy, but with a view of showing the facts upon the question now before the committee. I know that when the second amendment I made was under consideration, which proposed to allow the Legislature, when they should deem it for the interest of the State to improve the canals, and there were no funds to accomplish it, to raise the money by loan, to be reimbursed from the canal revenues, that that amendment was lost; not because this committee was unfavorable to the canals, as the gentlemen who have been discussing this question seem to think, but because they adhered to the provision of the Constitution of 1846, by which it was provided that whenever any loan was to be made, the bill itself should provide for the payment of the interest upon the loan and of the principal itself, by taxation. I offered that amendment because I had confidence that the revenues of the canals would be ample to provide for the payment of the loan.

Mr. TILDEN—If the gentleman will permit me, I will say that upon this point I entirely agree with him; that that amendment was rejected, not because the men who voted to reject it were unfriendly to the canals or to their improvement, but because, if that debt was to be created, they preferred that it should be created under the wise, conservative, prudent provision of the Constitution of 1846. I took occasion, if the gentleman will remember, during that debate, to say that I would myself agree in all proper measures for raising money, whenever a practical and useful improvement should be proposed, that was found to be really necessary, but that I would do nothing in that way which was unwise, dangerous and mischievous.

Mr. VERPLANCK—The gentlemen who speak of the Constitution of 1846 arrogate to

themselves and to it so much credit that I may be permitted to suggest that this doctrine was the doctrine of 1842, and that the Convention of 1846 adopted it. It was not new in 1846.

Mr. RATHBUN—If the gentleman will allow me, I will make this proposition to the gentleman. The chairman of the Committee on Finance has agreed and proposed that the very words used by the gentleman himself may be inserted in this section, if the gentleman will consent to the reconsideration of the amendment which has been passed, and to strike out the words inserted by that amendment, which are now agreed on all hands to be unnecessary, and if so, necessarily improper; and this section can be passed over. I propose to the gentleman, as the gentleman from Onondaga [Mr. Alvord] and the chairman of the Committee on Finance [Mr. Church], have come together to take the very words of the gentleman from Erie, [Mr. Verplanck] that that will really end the whole thing. I submit to the gentleman, instead of debate, to let the vote be taken; for these gentlemen are agreed, and in my judgment the Convention will agree to adopt it at once, and then he will reach his end without taking up time.

Mr. VERPLANCK—I have no objection. The time has come when we must work faithfully a good many hours in the day in order to perfect the work of this Convention. If it is understood that when the time comes for refunding to the State these \$18,000,000 raised by taxation for the benefit of the lateral canals, the Legislatures are not to be restricted in the use of the money, but may appropriate it to the canals if they see fit, I am content.

Mr. CONGER—It seems to me that we are in great danger at this time of repeating the same role that was played in the Convention of 1846. At that time the canals owed two classes of debts, precisely as they do now. One was owing by the State for the canals to the public creditors, and the other was owing by the canals to the tax payers of the State for taxes that had been appropriated as advances for the canals. We are in the same position now. The canals owe \$21,500,000 of debt which the State has contracted and owes to the public creditors; and they also owe the sum of \$18,000,000 which has been wrung from the tax payers of the State to meet the deficiencies of the enlargement.

Mr. VERPLANCK—For the Erie canal?

Mr. CONGER—The canals; so that the canals are in debt for the sum of \$39,500,000, the greater part of it to the public creditor, and the less part to the tax payers. In the Convention of 1846, the friends of the canals, as they called themselves, plead that some part of the debt which was owing to tax payers should be released; and the final arrangement was that if they paid \$200,000 annually to the treasury, to defray the expenses of the government, as an annuity up to a certain time, and \$672,000 a year after that, the annuity should be considered to be in lieu of the taxes which had been advanced by the people for the purposes of the canals. What is the present condition of that? The \$672,000 has been stricken out. The \$200,000 remained unpaid for six years, and was not paid last year nor the year before;

so that the debt which the canals owe the tax payers of the State is accumulating every year. In the settlement that has been proposed here, of \$18,000,000, no regard whatever has been paid to the \$200,000 that should have been paid for the eight years that I have specified. The peculiar friends of the canals in this Convention, play the same role. They admit the debt that is due to the public creditors; but they are unwilling to admit the debt that is due to the tax payers; and they found fault with the Committee on Finance, when that committee stated the several debts precisely as they were, and as they were guaranteed by the Constitution of 1846. Would you ask the Committee on Finance to supersede the Constitution of 1846? Does this Convention intend to decree that the debt which the canal owes to the tax payers, shall be canceled, and that neither the whole nor any part thereof, whatever be allowed in future to support and defray the expenses of the government? I am free to say that I, not only support the plan represented by the Finance Committee, but that if I could go further, I would not be content with the provision that the \$18,000,000 should be paid into the treasury of the State; but I would use the language of the Constitution of 1846, and add "to defray the necessary expenses of government." I do not wish any part of that money to be applied to the Capitol, or distributed among railroads, or other interests that may come up clamoring here, to defeat the pledge given by the State on behalf of the canals, that in the future our taxes should be less. What do the Finance Committee propose? They propose to leave that to the people of the State in future, as they shall instruct their Legislature; and if the future Legislature of this State shall determine that the canal tolls shall be reduced, the people will then derive the benefit of a less tax upon food and other commodities, which would relieve them ratably from so much taxation. But I should deprecate the idea that the Legislature of the State should take this \$18,000,000 from the surplus revenues of the canals, and waste it in prodigal expenditures anywhere. I am friend enough to the canals to say that, if that money is to be taken year by year, from the surplus remaining revenues, I desire that it shall go to the canals rather than to the Capitol, or to railroads or to anything else. But it is necessary for us, not only to preserve the public faith which is pledged to the public creditor, but to preserve the public faith which is pledged to the tax payers of the State. I do not see how it is possible for gentlemen to stand up here, and ask to have these \$18,000,000 set aside unless they make a better show of reason therefor than they have hitherto.

A DELEGATE—They do not propose to set it aside.

Mr. CONGER—But they do not propose to have it paid, and they are not willing to say it shall be paid into the treasury of the State to defray the expenses of the government. They are hardly willing to say we will leave it to future legislation to determine this question. The Finance Committee have proposed this, and we are willing to consent that it shall be paid into the treasury of the State, in purview of the pro-

visions of the Constitution of 1846, to meet the necessary expenses of the government; but, if at the time when it shall be so paid, the Legislature shall be so instructed by the people they may decree to appropriate these surplus revenues to future improvements of the canals. We cannot cancel any existing debt, nor can we avail ourselves of any sort of legerdemain in order, as I intimated before, to waive the debt of the canals to the tax payers of the State, but I am willing when the time shall arrive for the settlement of this question, when the public creditors shall be paid, to make judicious appropriation of it. It is time enough then (for the surplus revenues have been decreasing since the war down to the present time, and they were half a million short last year) to say what we will do with the surplus revenues. The Finance Committee suppose the public debt will be paid in 1878, eleven years hence, and then the people will be sufficiently instructed upon this subject to know whether they are willing to re-appropriate the money they have previously paid by taxation and which belongs to the tax payers, to improvements, or whether they will not. I cannot imagine why gentlemen want to retain this provision, "excepting as otherwise provided for in this article." If it means anything it means—

Mr. ALVORD—If the gentleman will give way a moment I will say that I am entirely willing that it shall be reconsidered.

Mr. CONGER—I understood the gentleman, when he was last up, to insist upon qualifying it; that the fifth section made it important for the interests of the canals.

Mr. ALVORD—To leave the fourth section as it was, I did say so.

Mr. CONGER—Well, then, that being understood, I will let the question be taken.

The question was put upon the motion to reconsider, and it was agreed to.

The question was then announced upon **Mr. Alvord's amendment**.

Mr. ALVORD—I now withdraw that amendment, and offer this amendment to come at the end of the section:

"The moneys so, from time to time, paid into the treasury shall be appropriated by the Legislature for the improvement of the canals or otherwise, as they may deem proper."

I do this rather than to strike out all after the word "State," because gentlemen seem to desire that there shall be some sort of Constitutional recognition of the \$18,000,000 debt. There is no real difference whether it is paid on account of the \$18,000,000 or anything else; after it gets into the treasury the Legislature will have the disposal of it. I make this amendment for the purpose of rebutting this idea of an implication that there might otherwise be that the canals could have no portion of the \$18,000,000 after the money is paid in.

Mr. VERPLANCK—If the gentleman will allow me to interrupt him one moment, I wish to state that these words are copied from the gentleman's fifth section.

Mr. ALVORD—I cannot help what they are copied from; I want them to go into this section.

in this connection, to show that we recognize the eighteen millions, that we propose that the canal revenues shall pay it, and that it shall go into the State treasury; but when there I do not want it understood that they shall not be used for the improvement of the canals. I therefore put it in the alternative, that the Legislature may have it in its control, to use it for the canals or for any purpose as they please.

Mr. RATHBUN—I move an amendment; to add: "But shall at no time be anticipated or pledged."

Mr. ALVORD—I accept that with a great deal of pleasure.

Mr. CONGER—I move to amend the amendment by striking out "or otherwise" and inserting "or to defray the necessary expenses of the government."

Mr. CHURCH—Will the gentleman from Onondaga [Mr. Alvord] allow me to suggest to him to strike out "otherwise" and insert "for such other purposes?"

Mr. ALVORD—I have no objection to that phraseology.

Mr. CHURCH—With that amendment it means precisely what the section meant before, and what I wanted it to mean, and I have not the slightest objection to have it expressed.

Mr. VERPLANCK—Then we are all satisfied.

Mr. AXTELL—I would like to hear that amendment read as every body seems to be pleased with it.

The question was stated upon the amendment offered by Mr. Alvord; but before the vote was taken.

Mr. VERPLANCK called for a division of the question.

Mr. GERRY—I rise to a point of order, that the vote having been already ordered and partly taken, it is too late to call for a division of the question.

The CHAIRMAN—The gentleman was recognized by the Chair while the vote was being taken, and the point of order is not well taken. Will the gentleman from Erie [Mr. Verplanck] indicate how the question shall be divided?

Mr. VERPLANCK—I want the question to be put upon the anticipation of the canal revenues separately.

Mr. BARTO—What has become of the amendment offered by the gentleman from Rockland [Mr. Conger]?

Mr. VERPLANCK—That amendment was withdrawn at the suggestion of the gentleman from Orleans [Mr. Church].

The CHAIRMAN—The Chair now understands that the motion is insisted upon, and it is therefore the pending question.

The question was put on the amendment of Mr. Conger, and it was declared lost.

The question recurred upon the amendment offered by Mr. Alvord.

Mr. GRAVES—I would like to inquire whether that amendment allows the Legislature to appropriate at any time moneys for the purpose of improving the canals without submitting the question to the people?

Mr. ALVORD—After they are paid into the treasury.

Mr. M. I. TOWNSEND—And after the payment of the debt of \$21,000,000.

Mr. GRAVES—I would like to move an amendment to that, if amendments are in order, to limit the time. There are many who believe the present capacity of the canal would be sufficient, if it were put in order, for all practical purposes of the State and for the produce of the West. I desire that the canal shall be put in working condition, that it shall be put into the hands of men who will repair it thoroughly, and fit it for all the practical purposes for which it was intended; and if then it does not answer the expectations and demands of the State, it should be improved. Would it not be better that some time should be fixed, within which this trial should be made, rather than to give the Legislature immediate power to appropriate these funds without testing the question whether the canal has the capacity or not.

Mr. ALVORD—I would ask the gentleman from Herkimer [Mr. Graves] whether he understands this to permit immediate appropriation.

Mr. GRAVES—That was my question.

Mr. ALVORD—It does not. It is after the debts have all been paid.

The question was put on the first part of Mr. Alvord's amendment, and it was declared carried.

The question was then put on the remainder of the amendment of Mr. Alvord and it was declared carried.

The question recurred upon the adoption of section 4, as amended.

Mr. CHURCH—There is an amendment that I think no gentleman on the other side will object to; to insert after the word "advanced" in the sixth line, the words "since 1846."

Mr. ALVORD—There is no sort of objection on my part.

Mr. CHURCH—Otherwise they might take it before that.

The amendment was agreed to.

Mr. COMSTOCK—The word "remaining" in the third line, it seems to me, is superfluous.

Mr. CHURCH—Remaining after paying the expenses of collection, etc. That word is used in all the financial sections.

The question was put on adopting the fourth section, and it was adopted.

The SECRETARY proceeded to read the fifth section as follows:

SEC. 5. After complying with the provisions of the third and fourth sections of this article, and after paying said expenses of collection, superintendence and ordinary repairs, the surplus revenues of the canals shall, in each fiscal year, be disposed of for the improvement of the canals, or in such other manner as the Legislature may direct, but shall at no time be anticipated or pledged.

Mr. GREELEY moved to strike out the fifth section.

Mr. CHURCH—I hope not. The section wants perfecting in order to make it agree with the previous sections. "Third" and "fourth" should be "second" and "third," as the sections have been altered by the committee. I make that motion.

Mr. ALVORD—I would ask the gentleman from Orleans, whether we have not got that entire in the fourth section.

Mr. HAND—I would like to know what it contains that we have not already passed upon.

Mr. BELL—I would like to inquire whether this section has not been substantially incorporated in the fourth section.

Mr. CHURCH—No, sir; it has not.

Mr. BELL—What part of it has not?

Mr. CHURCH—No part of it has; and if gentlemen will give me their attention for a single moment they will see that this section is necessary to perfect the financial plan in the article. First, we pay the debt of \$21,000,000. Second, we return into the treasury the amount of advances. To be sure we have left them, after they are in the treasury, to be disposed of by the Legislature, but we recognize that as a distinct thing, and say, after that is done, the Legislature may dispose of the surplus revenues of the canals as they see fit. That is in the present Constitution, and is in every one of the four articles reported on this subject.

Mr. COMSTOCK—We have just said all that in the amendment to the fourth section we have just adopted.

Mr. CHURCH—I beg pardon; we have only said it with regard to the \$18,000,000.

Mr. BICKFORD—Is not what you aim at in the fifth section what would be the rule if the fifth section did not exist? Would not the Legislature have full control of the matter if the fifth section were stricken out?

Mr. CHURCH—Possibly they might; but that is not the question.

Mr. BICKFORD—I ask the gentleman as a lawyer; does he not know the know they would?

Mr. CHURCH—Possibly they might; and still, by striking out that section, it might be claimed that the Convention intended something they do not mean, and I want to prevent that. We pay the debt, we pay the advances, and have the revenues all clear, and we leave them entirely free to the Legislature. Every article reported to the Convention has that same clause; the one reported by the Canal Committee; the one reported by the gentleman from Erie [Mr. Hatch]; the one reported by the gentleman from Monroe [Mr. Clarke]; and that reported by the Finance Committee. It is in the present Constitution, and it perfects the financial scheme. I cannot understand why it should be stricken out.

Mr. FOLGER—It seems to me that the chairman of the Finance Committee is right about this matter. Section 4 provides for paying debts and paying back into the treasury the \$18,000,000 (calling it the \$18,000,000 so as to be understood), and that the \$18,000,000 may be appropriated by the Legislature for the improvement of the canals. But section 4 does not give them power to do any more than that; only to appropriate the money which is paid to refund the \$18,000,000. The surplus revenues may run up above that to forty or fifty millions, after the \$18,000,000 are paid. Now, the chairman of the Finance Committee desires that we should say how we will dispose of that surplus. The fifth section provides for that. If the Convention should strike it out, it might be inferred that something was intended by its omission; and what could be intended but to take away the

power from the Legislature to use it for canal improvement? It seems to me that section 5 should remain.

Mr. CHURCH—Another thing I will suggest to the gentleman from Ontario, [Mr. Folger], that the provision that the revenues shall not be anticipated or pledged is an important provision in relation to these revenues; for otherwise the Legislature might authorize a large debt on the pledge of these revenues.

The verbal amendments moved by Mr. Church were agreed to.

The question was stated on the adoption of the fifth section as amended.

Mr. BICKFORD—There was a motion to strike it out.

Mr. RATHBUN—Section 5, as I understand it, takes up the revenues of the canal where section 4 leaves them, and goes on and provides what shall be done with regard to them after the payment of the debts. That is all there is of it, and I submit that it is entirely proper and correct, and necessarily requires the same protection with regard to the anticipation or pledging as the others, and the same restriction should be made with regard to them.

Mr. RUMSEY—I move to strike out the fifth section entirely, and I do it for this reason: the fourth section provides for the payment of the remaining revenues of the canal into the treasury, and when the money gets there it is to be disposed of according to the will of the Legislature. The gentleman from Orleans [Mr. Church] says it does not apply to the revenues derived from the canal after the \$18,000,000 and the interest shall have been paid. Where will those revenues from the canal go? There is no other place, in the absence of constitutional requirement, for them to go except into the treasury; and when there they belong to the people. My friend from Cayuga, [Mr. Rathbun] around whom the ghost of a rallied democracy is still hovering, is very much afraid the revenues of the canals will be improperly spent after that time; and yet the Finance Committee have introduced an article or provision in which it is expressly declared that no debt shall be contracted under any circumstances except upon submission to the people. If that is adopted you cannot pledge the revenues of the canal. Every delegate intends to vote for the provision that no debts shall be contracted except by the consent of the people, and if you have that in what is the use of this? That of itself will prevent the pledge or anticipation of the canal revenues, because that pledge or anticipation necessarily involves a debt to be paid out of such anticipated revenues.

Mr. ALVORD—I am of the opinion that the chairman of the Finance Committee is correct in the position he has taken with reference to this section. I think it takes care of the remaining revenues of the canals after they have performed their legitimate work, and gives legislative control over them after the debts are paid; and I will say that the chairman of the Committee on Finance has shown himself a better friend of the canals than I had given him credit for. He is willing to allow these revenues to be used for the benefit of the canals, and I trust there will be no objection to the passage of this section.

Mr. BICKFORD—I move to amend by striking out in the fifth line the words “in such other manner,” and to insert “for such other purpose,” as a better verbiage. I want it to read so that there shall be no mistake about it.

Mr. McDONALD—There is one suggestion I have to make, as we have been spending considerable time over this. If it takes twenty years to pay twenty odd millions of dollars, how long will it take to pay nineteen millions more? The canals would have to produce an annual revenue of over \$4,700,000 to pay it in eleven years, the time provided for. The chairman of the Committee on Finance has made the calculation—how long was the—

Mr. CHURCH—Up to 1878.

Mr. McDONALD—Then it would take \$4,700,000 to pay it in 1878.

Mr. CHURCH—To pay what?

Mr. McDONALD—To pay the whole debt, the nineteen millions added to the twenty-one millions. We are providing for the revenues after that is all paid. We are spending time on this when we never shall reach it, for the canals have not paid \$4,000,000, and will not unless they are enlarged, and if they are enlarged the expenses have got to come out of it.

The question was put on the amendment of Mr. Bickford, and it was declared carried.

The question was put on the motion to strike out the fifth section, and it was declared lost.

The question then recurred on the adoption of the fifth section as amended, and it was declared adopted.

The SECRETARY proceeded to read the sixth section, as follows:

Sec. 6. All sums which shall be paid into the treasury under the provisions of section four of this article, shall be appropriated and applied in each fiscal year as follows, viz.: Until the debt specified in the first section as the bounty debt, or the debt created in renewal thereof as herein-after provided, shall be paid or provided for, the said sum or sums shall be appropriated and set apart to the sinking fund provided for the payment of said debt, or the said renewal thereof, and the tax to supply said sinking fund shall be correspondingly reduced. The Comptroller is hereby authorized to renew the said bounty debt or any part thereof, by extending the time of its payment to the first day of October, 1885, and to issue stock for that purpose, which he may apply either in exchange for the outstanding stock, or by sale in the usual manner, and the application of the proceeds thereof to the purchase of the outstanding stock. The stock so to be issued shall not bear interest to exceed seven per cent per annum, payable semi-annually, and shall be exchanged or negotiated on the best possible terms, and in no event at less than par, nor at a lower rate than the outstanding stock can be purchased for at the time the sale or exchange shall be effected. The principal and interest of the stock hereby authorized to be issued, shall be secured by a sinking fund to be provided for in accordance with the provisions of the fourteenth section of this article. After the said bounty debt, and the said renewal thereof shall be paid or provided for, the sum or sums so paid into the

treasury shall be appropriated toward the ordinary and necessary expenses of the State government; and if in any year there shall be more than sufficient paid into the treasury for that purpose, the surplus may be disposed of by the Legislature.

Mr. CHURCH—This section is the one that appropriates the funds after they are returned to the treasury; and in pursuance of what seems to be the sentiment of the Convention, and to save time, I move to strike the section out.

The question was put on the motion of Mr. Church, and it was declared carried.

The SECRETARY proceeded to read the seventh section, as follows:

Sec. 7. The claims of the State against any incorporated company to pay the interest and redeem the principal of the stock of the State, loaned or advanced to such company, shall be fairly enforced, and not released or compromised, and the moneys arising from such claims shall be set apart and applied to the payment of said stock so loaned, or to repay the money which may be advanced to pay the same.

Mr. SEAVER moved to strike out “fairly” and to insert “strictly.”

Mr. BELL—Would not the gentleman accept the word “fully” instead of “strictly”?

Mr. SEAVER—I will make it “fully and strictly.”

Mr. BICKFORD—I would inquire of the chairman of the Finance Committee whether there are any existing debts or advances made to incorporated companies to which this section is intended to apply.

Mr. CHURCH—This section is now of very little practical importance. On the 1st day of July there was a small balance of \$218,000 still outstanding, but that debt is entirely secure and will be paid to the State. But to retain this provision, which is a provision in the present Constitution, is a matter of prudence and safety.

Mr. ALVORD—Will the gentleman permit me to ask him the question whether there is not now some existing indebtedness in this wise; that the State has become responsible for parties who have paid the interest but have not paid the principal, though the time has gone by?

Mr. CHURCH—The only case in which the time has been extended is the case of the Long Island railroad. I do not remember the amount.

Mr. ALVORD—How is it with the railroad in the neighborhood of Corning?

Mr. CHURCH—Has not that company been wound up long ago?

Mr. ALVORD—I think not. I think it is now being wound up by the Attorney-General.

Mr. CHURCH—What is the name? Is it a mining company?

Mr. ALVORD—No, sir; a railroad.

Mr. SPENCER—The State of New York can have its money now any day.

Mr. CHURCH—It seems to me that this amendment is entirely unnecessary. If we look at the words we shall see that it says “fairly enforced and not released or compromised.” That is amply sufficient to secure the State.

Mr. ALVORD—The reason I desire the amendment is this. The gentleman from Steuben [Mr.

Spencer] says there is no doubt about the perfect responsibility of the road. That is not the question; the Legislature by law extended the time for the payment of this Corning and Blossburgh railroad debt indefinitely, or until required to be paid by act of the Legislature, and at the same time forbid the building of a competing road until the debt was paid. The Legislature has ordered this to be paid, and the road is not ready to pay, because that would take off the inhibition to build a competing road, and make the excuse that the order for payment was a joint resolution and not an enacted bill or law.

A DELEGATE—There can be no other road built in opposition to it.

Mr. ALVORD—That is one reason why I want this amendment passed. I want to relieve, as far as that amount is concerned, the parties interested, and let the railroad throw off this incubus which will remain so long as this debt is not paid.

Mr. RUMSEY—It seems to me a small game to put an article into the Constitution to enforce the laws of the State of New York as to a debt of half a million, for which the road is as entirely responsible as the gentleman from Onondaga [Mr. Alvord] would be for a debt of two shillings. The difficulty is not that they will not pay their debt, but that the debt is not yet due; and although the Legislature, by concurrent resolution, directed the proper officers to go on and order the sale of the road, yet the Attorney-General has given the opinion that the money is not due, and that he cannot legally do it. As to putting an article into the Constitution to collect that debt, if that is what is meant, we had better let it alone.

Mr. ALVORD—I certainly, Mr. Chairman, do not desire to make the Attorney-General do anything that would render the State liable for costs; but I want to have it so that when the time shall come, that debt which is due from the railroad should not be held under the provision of law which now exists in the way of any public improvement alongside of it, which is desired by other people. I do not propose to discuss whether it is or not due. I desire to put it in the Constitution, if I can, so that the people of New York can get the money when it is due, and take out of the way any obstruction to other improvements in the same location where such a railroad may be.

Mr. BICKFORD—I move to amend the third line, by striking out the word "fairly," and inserting nothing in its place, for it means nothing. When it says "shall be enforced," that is all that possibly can be done. There cannot be any more expressive language than that.

The question was put on the motion of Mr. Bickford, and declared carried.

The question was put on the motion of Mr. Seaver, and declared lost.

The question then recurred on the adoption of the seventh section, as amended, and it was declared adopted.

The SECRETARY proceeded to read the eighth section, as follows:

SEC. 8. Every contribution or advance to the canals or their debt, from any source other than their direct revenues, shall be repaid into the

treasury, with interest, for the use of the State out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the debts specified in section number two; and except to provide for the payment of the debts specified in section number two, no tax shall hereafter be imposed upon the people of this State for works of internal improvement, or their debts, unless authorized by a vote of the people according to section fourteen of this article.

Mr. CHURCH—There are two verbal amendments I wish to make. The word "two," in the sixth line, and the word "two," in the seventh line, should be "one" in both instances.

No objection being made, the section was so amended.

Mr. BICKFORD—I move to strike out the forepart of the section, down to and including the word "two" in the sixth line, so as to begin with the word "except." It strikes me that the whole forepart of that section is already fully provided for in section 3, and there is nothing in the section down to the word "except." I ask the chairman of the Finance Committee if that is not so.

Mr. ALVORD—It strikes me that this entire section ought to be stricken out. We have already provided for contributions. But if it is to be retained, it should say "every contribution, or advance to the canals or their debt thereafter made;" because we have already taken care of all that has heretofore been made.

Mr. HALE—I wish to ask the gentleman from Onondaga [Mr. Alvord] whether the ninth line of the fourth section does not provide for amounts hereafter to be advanced, as well as those that have already been advanced.

Mr. ALVORD—I think there is no necessity for the section at all. In my opinion, it ought to be all stricken out. I move to strike out the section.

Mr. CHURCH—The gentleman does not mean to strike out the whole section. The first part of the section is precisely the present Constitution. I do not think myself, that the first part of it is so very important since the fourth section has been adopted by the Convention. But the latter part of the section I regard as the most important section in this article. I desire to call the attention of the committee to the latter part of this section: "except to provide for the payment of the debts specified in section number one, no tax shall hereafter be imposed upon the people of the State for works of internal improvement or their debts, unless authorized by a vote of the people, according to section fourteen of this article." Now, sir, I regard that part of the section as the most important provision in this financial article.

Mr. BICKFORD—Allow me for a moment to ask a question with which the chairman of the Committee on Finance is familiar: Is there anything like the latter part of this section contained in the present Constitution?

Mr. CHURCH—No, sir; that is a great defect in the Constitution of 1846. I was going on to say the Constitution of 1846 prohibited the creation of debt; it provided distinctly for the payment of debts; but it left this door open—the

power of the Legislature to tax the people to any extent for any works of internal improvement. The Legislature have been in the habit of exercising that power for the last ten or twelve years, until they have drawn from the people of the State fifteen or twenty millions of dollars.

Mr. BICKFORD—Allow me to ask a question. Do you intend, by the words "internal improvement," to include taxation for the purpose of rendering State aid to railroads? Let us be honest in this matter.

Mr. CHURCH—I suppose it would include that. But there is another provision intended to prohibit all that kind of thing more clearly. The plain object of this section is to prohibit taxation for improvements owned by the State; for instance, new works or new projects. Somebody wants a canal, or desires to make any improvement upon the public works of the State. We desire to prohibit the Legislature from taxing the people unless the people vote for it, according to section 14, for which we provide. The seventh section supplies the glaring defect which exists in the Constitution of 1846 on this subject.

Mr. ALVORD—I am very glad to hear there was a defect in the Constitution of 1846. It is the first time I have heard of it, at least from the gentleman from Orleans [Mr. Church]. I supposed it was the most perfect instrument that could by any possibility be framed by the hands of man. I am opposed to this provision, for I think we have got it all in the fourteenth section. If the people of this State, as represented by the Legislature, hereafter see fit to enter into any work of internal improvement, for which, by the terms of the Constitution, they have got to raise the money from the people by taxation in the very incoming year, let the people have it without going through the operation of submitting to the people a distinct provision. But if the people of the State, through their Legislature, desire to go in debt to be paid thereafter, to be an incubus on the State, it is right to have it left to the people of the State to say whether or not they are willing to take the debt on the shoulders of themselves or their posterity. If the Legislature desire that a certain improvement be made, the taxation for which shall follow immediately, let them have it. Here is a circumstance directly in point: the Chenango canal extension. That, last year failed to get an appropriation from the Legislature. Now, if the people of the State of New York desire to have the interpolation of a vote of the people, two, or three, or four years hence, to say whether or not they shall take care of what they have done there, or render it entirely useless, then pass this provision of the gentleman from Orleans [Mr. Church]. But if, on the contrary, after all that has been heard here and all that has been said among the people during the past year, the Legislature shall come together next winter and conclude to provide \$750,000 necessary to complete the improvements, let the Legislature do it without the necessity of going to the people for that purpose. We have commenced that improvement. It is about thirty-eight miles long. The first ten miles have been completed; the next ten miles are almost finished; the third ten miles are about half done; and the balance is not

yet touched. It is of no earthly use under heaven where it is; it can be put to no good purpose; it can never receive a dollar from any source whatever by way of revenue to the State, so far as regards that extension. If it is to be serviceable at all, it must be serviceable when it shall have reached the coal mines of Pennsylvania, by connection with the North Branch canal of Pennsylvania. But short of that it is of no use except to accommodate to a small extent, Owego, if it shall happen to reach there. I object to tying up the Legislature in this way in regard to such an improvement. Another thing. Suppose it is necessary to have a still further amount of money raised by taxation, for the purpose of completing the improvement contemplated by the law of 1864 in regard to the Champlain canal, and the revenues of the canal do not come up to that point; suppose an appropriation of \$200,000 is needed for that purpose, shall it be necessary to go to the people for it? It seems to me the Legislature should have the right to impose that tax upon the people; and they will be careful how they impose a tax which has to be paid immediately. Men will not be so careful, or look with so much horror on a debt which is to be shovelled off, or destined to be paid, probably, by their children: but when they come to incur a debt which will have to be paid immediately, they will take it into due consideration. It is for the purpose, most particularly, of saving, so far as regards this matter, these improvements on the Chenango and Champlain canals, which were about to be completed, that I desire not to see this section in the Constitution. I think it would be safer to trust the Legislature of the State to tax the people where the money is to be paid directly. Therefore I think this was not a mistake on the part of the Constitution makers of 1846, and they were right in that respect.

Mr. PRINDLE—Is an amendment now in order?

The CHAIRMAN—It is not now in order, as two amendments are pending.

Mr. PRINDLE—I wish to offer an amendment in case this section should not be stricken out. I hope it may be stricken out. I wish to add a single word to what the gentleman from Orleans [Mr. Alvord] has said in regard to the Chenango extension. I believe the State Engineer and Surveyor has reported that the work is almost all under contract at the present time. If the Constitution deprive the Legislature of the privilege of imposing a tax on the people, the work cannot go on, the State cannot fulfill its contract with the contractors, and the people will have nearly as much to pay for damages on their contract as they would to complete the work.

Mr. E. P. BROOKS—I am in favor of the motion to strike out this section, for the reason that in case it should be adopted, and become a part of the organic law, I believe great inconvenience, embarrassment and injury may result from it. If the section shall be incorporated into the Constitution, then not only the completion of the Chenango canal extension is to be indefinitely postponed, and the State thereby subjected to serious loss, but all the lateral canals are to be neglected.

and any improvement of them, however desirable and expedient such improvement may now be or hereafter become, in the judgment of the people's representatives, yet they are to be practically prohibited from making them. I am aware, sir, of the prejudice that exists in the minds of some gentlemen against the "lateral canals," while others regard them as paupers in the family only to be tolerated because of the relationship, their advocates looked upon with distrust—as "sturdy beggars," and neither entitled to friendly consideration. This prejudice may be due, to some extent, to the unfavorable exhibition presented in the tables furnished in our Manual; accompanied as this exhibit is, by the "stump speech" by way of *nota bene* to the tables, and also to the belief that is now somewhat prevalent, that the sharpers of the "canal ring" have by means of the lateral canals plundered the State treasury, and debauched their trusted guardians. But sir, I have some knowledge of the lateral canals, beside that derived from the statistics furnished us. I think I know something of their value, not only as contributors to the commerce of the Erie canal, but to the citizens of the region of country in which they are located; and they are not to be crucified between thieving contractors on the one hand, and incompetent or dishonest officials on the other, without at least a protest from me. I have made a pretty thorough and careful analysis of the statistical tables, and have compared them with other evidence furnished by the canal department, and, if the committee will permit me, I think I shall be able to modify the views, which the tables are calculated to impress the minds of gentlemen who may have relied upon them as authority. I shall not have time to speak of all the "lateral canals," hence shall confine my remarks mainly to the Chemung canal (my constituents being more directly interested in that canal), and leave it to other gentlemen to represent the interests of their localities. If gentlemen will examine table No. 5 of the Manual, page 131 of volume 2, they will find that it purports to give a "statement showing, 1st, the tolls received in each fiscal year from 1846 to 1866; 2d, tolls paid on Erie canal for tonnage received from the Chemung canal during the same period; 3d, the cost of collection, superintendence and ordinary repairs each year during the same time; 4th, percentage of cost on receipts of Chemung canal alone; 5th, paid by Erie and Champlain canals tolls to support the Chemung; 6th, contributed by the Chemung canal to the Erie and Champlain canal fund; 7th, tons shipped on the Chemung canal each year: seven columns of figures represent these seven distinct items. By this table it will be seen that the "tolls proper" on the Chemung canal during this period amounted to \$353,752.24; the tolls contributed to the Erie canal for the same period amount to \$1,153,905.40. Add the two accounts together, and you have for tolls proper and contribution to the Erie alone, \$1,507,657.64, while the costs of collection, superintendence and repairs, for same period, are summed up at \$1,331,219.21. Thus showing a balance to the credit of the Chemung canal, after paying the expenses of collection, superintendence and repairs, of

\$176,436.43. It will be observed that this table does not credit the Chemung canal with the tolls contributed to the Cayuga and Seneca canal, over which every pound of it, contributed to the Erie, passes and to which it contributed tolls. A fair estimate of the tolls contributed to the Seneca and Cayuga, I think, could not be less than \$200,000. This, added to the balance already shown, would show a credit to this pauper canal of the sum of \$376,438.43, after paying all expenses of collection, superintendence and repairs. And yet, notwithstanding this result is reached by an examination of the table itself, the note at the foot of the table (which I have by courtesy denominated a stump speech) avers that "this canal has not paid the cost of superintendence, collection and repairs the last twenty years into \$977,466.97." A slight difference truly! I don't know whose arithmetic was used in getting up these tables, but the sum can't be proved by Daboll. Still further, sir, to prove that these tables are entirely unreliable, I have compared them with similar tables furnished by the auditor to this Convention, in response to a resolution offered by the gentleman from Rensselaer [Mr. M. I. Townsend]. This comparison, which I have not now the time to make in detail, will show a discrepancy of over \$100,000. Again, I find that on the 9th of March, 1864, the canal board, in their response to a resolution of the Senate, referring the question of the propriety of enlarging the locks on the Chemung canal, submit a statement of the amount of tolls received on this canal from 1857 to 1863, both years inclusive. This report may be found in Senate Document, volume 4, of 1864, No. 64. I beg leave to call the attention of the committee to that report in connection with the statistics furnished in the Manual, so that gentlemen may clearly see the discrepancies:

	Aggregate of the tolls proper and contributed.	
	By the Manual.	By canal board.
1857.....	\$66,420 00	\$80,769 00
1858.....	63,783 81	72,467 00
1859.....	72,870 81	80,335 00
1860.....	71,968 25	80,163 00
1861.....	54,769 06	62,250 00
1862.....	73,151 33	86,901 00
1863.....	75,875 80	91,960 00
	\$483,131 46	\$556,584 00

Showing a difference for the seven years of \$73,452.54; that is, the canal board say that the tolls received on this canal for the period stated amounted to \$556,584, while the tables in the Manual show that the entire tolls received, together with the tolls contributed to the Erie canal, amount to only the sum of \$483,131.46. Again, allow me to call attention to the results exhibited by tables 4 and 5 of the Manual. Table 4 relates to the Seneca and Cayuga canal; table 5 to the Chemung. The former is about twenty-three miles in length, while the latter, with the

feeder, is thirty-nine miles, so that the distance that freight is carried on the latter is over one-third greater than that carried on the former. Table 4 shows the tonnage of the Cayuga and Seneca canal from 1847 to 1866 inclusive to have been 2,079,998, and for which this canal is credited with \$488,149.58 as tolls. Table 5 shows the tonnage of the Chemung canal for the same period to have been 4,248,433, and for which this canal is credited with \$353,752.24 as tolls—producing this astonishing result: that while the Chemung canal has carried more than double the tonnage and over one-third greater distance, yet she has credit for \$134,387.34 less tolls than the Cayuga and Seneca canal. I will not detain the committee with any comments upon the gross and palpable injustice these tables do to the Chemung canal. I would not censure any one for these erroneous statistics, the errors are doubtless due to the necessarily hasty manner in which they were prepared for the use of the Convention. My object in calling attention to them is to vindicate the "lateral canals," and guard against unjust prejudice they are calculated to create. It is upon these tables of statistics that many gentlemen of this Convention, who have no personal knowledge of the business or relative importance of the lateral canals, must depend for information. I desire to state some facts for the information of gentlemen not familiar with the history of the Chemung canal, its capacity and tributaries, its prospective utility and increasing value. The canal proper extends from the city of Elmira to the head of Seneca lake, a distance of twenty-three miles; it is twenty-eight feet five inches in width at bottom, and forty-two feet at water surface; its locks are ninety feet by fifteen feet, having a capacity of about seventy-five tons. It has a navigable feeder extending from Corning to Horseheads, within six miles north of Elmira, where it intersects the Chemung canal. The canal was completed in 1831, at a cost of \$314,395. It has had three sets of locks built of wood, the first set costing \$1,600 each, the second set \$5,500 each, and the third set \$8,484 each; these locks have been rebuilt at intervals, as it was found necessary from dilapidation or decay to do so. The tonnage of this canal finds an outlet north, east and west, through the Seneca lake—navigable at all seasons of the year—to Geneva; thence, via the Cayuga and Seneca canal, to Montezuma, where the latter intersects the Erie. On the south the Chemung canal is connected with the Junction canal—a canal owned by a private corporation, but which, in my judgment, ought to have been built by the State—this latter canal extends from the Chemung at Elmira to Athens in Pennsylvania, there connecting with the North Branch canal, which extends to the head of the inexhaustible anthracite coal fields of the Wyoming valley, thus furnishing the most direct and feasible as well as the only water communication between the central and western part of this State and the coal-basin I have mentioned. Pittston, on the North Branch canal is the central part of the coal-basin, and it is within 113 miles of the Chemung canal at Elmira, and upon the coal supplied from this locality must the

citizens of central and western New York mainly depend for fuel in the future. So rapid, sir, has been the increase in the consumption of coal for the last few years, and so great the demand for it by citizens of our own State, that the North Branch Canal Company, finding that they had not facilities for transportation adequate to the demand, are now constructing and will in a few months have in operation a railroad running along the banks of their canal from Athens to the coal fields, and when this shall have been completed it is believed by the parties interested in it that they will have the carrying capacity to enable them to deliver 2,000,000 tons annually on the Chemung canal at Elmira. In addition to these facilities I have mentioned for the transit of coal is the Northern Central railroad, which connects with the Shamokin coal fields of Pennsylvania, distant 138 miles from Elmira; there was delivered over this road at Elmira the past season over 100,000 tons of coal, and with increased facilities for distribution at the latter point would deliver much larger quantities. Anthracite coal of excellent quality and of inexhaustible supply has been recently discovered in Sullivan county, Pennsylvania. These coal mines are located but sixty miles south of Elmira and about the same number of miles nearer central and western New York than any other hard coals. The product of these mines the present year is estimated at over 100,000 tons. In addition, still, to the large quantities of anthracite coal that would find its natural, most direct and cheapest outlet to a ready market in western and central New York through the valley of the Susquehanna and the Chemung is the productions of the Blossburgh and Barclay mines of bituminous coal. The tonnage from these mines has already reached a very high figure and would be largely increased if better facilities were offered for its distribution through this State. Sir, is it not desirable to secure this vast amount of tonnage to the Chemung canal and the other canals of this State? Much of it the other canals would undoubtedly receive, even if no greater facilities are afforded through the Chemung canal, but in that event a large share of it will be diverted to the railroad—

Here the gavel fell, the gentleman's time having expired.

Mr. HALE—I rise to a question of order. I understand the motion pending is to strike out the whole subject. That motion is not in order until the section has been perfected by amendment.

The CHAIR held that, being a motion to strike out a portion, it was in the nature of a motion to perfect, and had precedence.

Mr. RATHBUN—Mr. Chairman, I wish to say—

Mr. CHURCH—I hope the gentleman from Chemung [Mr. E. P. Brooks] will be allowed to finish his argument.

Mr. RATHBUN—I have no objection. If it is the wish of the Convention, I am willing to yield the floor for that purpose.

The CHAIRMAN—There being no objection, the gentleman may proceed.

Mr. NELSON—I object.

Mr. RATHBUN—I am opposed to striking out the whole of this section. I have no objection to striking out the part of it proposed to be stricken

out by the gentleman from Jefferson [Mr. Bickford]. Leaving that out, the section will read in this way: "Except to provide for the payment of the debts specified in section number 1, no tax shall hereafter be imposed upon the people of this State for works of internal improvement on their debts, unless authorized by a vote of the people according to section 14 of this article." I propose, if in order, to move this amendment. It is the same words, with a mere transposition, of the remainder of the section: "No tax shall hereafter be imposed upon the people of this State for works of internal improvement or their debts, unless authorized by a vote of the people according to section 14 of this article, except to provide for the payment of the debts specified in section number 1." These are the same words, but transposed so as to have the word "except" in the latter part of the section, instead of the first. I will offer that amendment, when it is in order. I am in favor of the motion, of the gentleman from Jefferson [Mr. Bickford] to strike out. Now, in regard to the argument and proposition of the gentleman from Onondaga [Mr. Alvord] to strike out the whole section, I am opposed to that, and upon this ground: that the proceeds of the canals—all the revenues after appropriating \$2,418,000 annually for the payment of the debt of \$21,000,000—the residue is left in the hands of the Legislature for the benefit of the canals, and in the estimation of the Canal Committee would amount to very nearly \$600,000 annually, without any considerable improvement in the revenues. Now, sir, that fund is left at the disposal of the Legislature for the purpose of improving the canals, and I apprehend that the gentlemen who represent the lateral canals are entirely mistaken when they believe that the Legislature will seize upon that \$600,000 a year and appropriate it to the enlargement of the Erie canal. The strength of the lateral canals will be too much for those who represent the Erie canal to have that done, and it ought not to be done. Now, a word on the Chenango canal. If not abandoned, it ought to be completed, and those surplus revenues should go for that purpose, so far as it may be done with justice to other canals. Then the Champlain canal works already commenced—and which should long since have been finished, and probably would but for the improper disposition of the moneys appropriated to that purpose—that canal is entitled to be finished, also, the locks to be enlarged, and the channel of the canal to be enlarged. I suppose these surplus funds in the hands of the Legislature, judiciously and honestly applied, would be first appropriated for the purpose of finishing the Chenango canal enlargement, the Champlain canal, and such other canals as need immediate improvement, for the purpose of ordinary business. There is, therefore, a fund abundant for that purpose—not to do it all in a year, but to do it all as soon as it is really necessary to be done, and without borrowing. Now, sir, having that fund on hand, I am opposed to any increase of the public debt for any purpose of enlarging the canals, except by permission of the people. The balance of this section provides that no tax shall be levied on the people of this State for the improvement of the canals, or other pur-

pose, except as provided in section 14, unless it be in payment of the debt provided for in section 1. Now, it will be readily seen that it is next to impossible that any exigency can arise for any tax for that purpose. The whole revenues must necessarily go to that fund, \$2,418,000 annually, and then there can be no tax for the purpose of paying the debt which the \$2,418,000 is designed to pay, and will pay if applied properly. There will be no tax levied for that purpose. I assume and I insist that no tax should be levied for enlargement or improvement of the canals, unless the people of the State shall say by their votes it may be done; and with that view I am in favor of that part of the section which is proposed to be stricken out by the gentleman from Onondaga [Mr. Alvord]. We have funds enough to complete the Chenango canal, and to complete that work in a short time. We have funds enough to complete the Champlain canal in a short time. We have funds, if necessary to complete the Genesee Valley canal and make it available. That may be done without borrowing a dollar, provided we are not too much in a hurry. But when you come to the point that the whole revenues of the canals should be spent upon the canals, I submit that the people of the State should have the privilege of saying that they approve of that object and will ratify it by their votes. If there is any danger of taking this question from the people, then the gentlemen so much in love with the people are certainly not consistent. These canals belong to the people, and I think that nobody in the world can be more safely intrusted with what should be done for them than the people who own them. I have no apprehension that any project which is reasonable and proper will ever fail when presented in a proper manner to the people of this State for their vote. I believe that it is wise to preserve all the safeguards and securities which are found in the Constitution of 1846, so that there shall be no debt commenced by the Legislature, by which the people shall be bound, of which they shall not have the inauguration, which shall not go to them in the first instance, to obtain their permission; and if we preserve that part of the section, we certainly have laid a foundation which shall prevent any such thing. I think it is proper that should be done, and that we should adhere with tenacity to every one of these protections and securities of the Constitution of 1846, against debt. Now, sir, they are against the contraction of debt. The people have a right to be heard when they are called upon to shoulder a debt by taxation; and I submit the better and the honest way is to go to them with the debt proposed to be contracted and with the proposition that it shall be incurred and that they shall be taxed to pay it, no matter what the object of that debt. I submit they are the persons to be consulted, and their adoption ought to be final and conclusive. If they say no, let the canals wait for their change of opinion, or increase their revenues. I think we are right in that. There is nothing up; there is merely a safeguard, which the Legislature can break over. It is a safeguard in the action of the Legislature which the people have a right to have. They had it in the Constitution of 1846,

and I am yet to learn that they are willing to give it up in the Constitution of 1867, if it shall ever be done and submitted to the people. I want it to go to them as one of the good things that they approved, not only when they ratified the Constitution of 1846, but ever since.

Mr. ALVORD—The difficulty with the gentleman from Cayuga [Mr. Rathbun] is, that he does not understand the question. The proposition here is not to put into the Constitution anything which was in the Constitution of 1846, but something new, which is not in the Constitution of 1846.

Mr. RATHBUN—Is it not in section 5?

Mr. ALVORD—No, sir; it is not in the Constitution of 1846. It is an attempt to go beyond the Constitution of 1846 and put something else in. Now, I trust there will be no attempt in this Convention, or in the future, to bring into conflict the hostile interests represented in the canals of our State. Let us look over the whole field for a single moment. It has been conceded by the gentleman from Orleans [Mr. Church], by the gentleman from Cayuga [Mr. Rathbun], and it has been conceded by the Convention, so far as regards the Erie canal, without any reference to the question of improvement by way of enlargement, that an immediate necessity exists, as soon as it possibly can be done by revenues derived from the canals, to have the wall-benches removed, and that a further supply of water shall be brought in at the east end of the long level leading from Syracuse to Utica—two improvements which, according to the estimate of your engineer, would cost two millions of dollars and over. Are you going to hold in abeyance a matter which completes the canal as originally designed, until you can provide three or six millions out of the canal revenues over and above the \$2,418,000 to make the Chenango canal extension, and complete the Genesee Valley canal to the Alleghany river, enlarge the locks on the Chemung canal, and, if necessary, to complete the improvement on the Champlain canal? It strikes me not. Why, look at this matter in the way in which it should be viewed. Consider the necessities of commerce. So far as concerns the Erie canal, that great artery, we concede the necessity. So far as the Champlain canal is concerned it has the reputation of being a paying canal of the State, which demands of the people that it should be taken care of and protected. Now, the point comes down to this: are we, after we have gone on with improvements and spent \$100,000, when it requires something in the same neighborhood to complete it, so as to get the greatest amount of return for our investment, to wait four or five years until we get it from the canals? Therefore it is, I say, the Legislature should have a right, if they see fit, not to say that a debt shall be created, not that the people of the State shall pay it; but that when, for the purpose of making an improvement in coming years, they may lay a tax on the people of the State, which will run *pari passu* with the law authorizing the very improvement, for the purpose of getting in hand the money necessary. I have no fear, for one, that the Legislature of the State will undertake to pass any act for the purpose of internal improvement that will call upon the people to respond at once

by taxation, beyond what will be necessary for the people. I do agree with those who would not give the Legislature the right to roll up a debt of thirty, forty, or fifty millions, to be thrown upon us for all time to come without giving the people an opportunity to vote on the subject. But when the Legislature determines on making a work of internal improvement of this kind, for which the taxes shall be raised at once, I think it is entirely safe to leave it to them so to do; and it is the only manner in which you can open a way to complete the improvement of the Chenango canal, or the Genesee Valley canal, to reach the coal mines. It may take considerable time before there is money enough to take care of the Champlain canal. Suppose, for instance, this very coming year there should be less money arising out of the revenues of the canals, than would come up to \$2,418,000. Why, under this provision you stop all improvements everywhere, unless you go to work and pass a law and submit it to the people whether they are to be taxed or not. What is the Legislature made for? It is made for the purpose of passing laws, which, in nine cases out of ten, produce taxation. Are you, therefore, undertaking to make the Legislature a sort of tender to the people, coming here and passing laws in reference to a work the taxation for which shall take place within twelve months, and going back to the people before it shall become a law? I take it there is a great difference between a provision to put a debt upon the people to be paid a long time hereafter, and a provision to permit the Legislature to pass a law by which a tax shall be required to be raised that very year to carry out the purpose.

Mr. BICKFORD—I would inquire from the Chair what is the question before the Committee?

The CHAIRMAN—It is on the amendment of the gentleman from Jefferson [Mr. Bickford].

Mr. BICKFORD—If I withdraw my amendment, the question will be on striking out the whole section. I will withdraw my amendment, for the purpose of speaking to the amendment of the gentleman from Otsego [Mr. Alvord]. I wish to make a speech in favor of State aid to railroads, and I perceive it is now within a minute of the time for adjourning.

The hour of two having arrived, the PRESIDENT *pro tem.* resumed the chair, and the Convention took a recess until four o'clock.

AFTERNOON SESSION.

The Convention re-assembled at four o'clock, and proceedings were resumed.

Mr. GERRY offered the following resolution:

Resolved, That the board of commissioners of the metropolitan police, be requested to furnish this Convention, as soon as practicable, with a tabular statement, showing

1. The aggregate number in the force in each year, from the year 1857 to the year 1867, both inclusive.

2. The gross amount paid in each year as salaries to the commissioners, superintendent, inspectors, surgeons, captains, sergeants, patrolmen and clerical force respectively, during the period above mentioned.

3. The number of men in each year expelled or dismissed from the force during the period above mentioned, with the causes or grounds of dismissal briefly stated.

4. The number of complaints preferred in each year before the board of commissioners against members of the force, together with the disposition of such complaints during the period above mentioned.

Which was laid over under the rule.

Mr. GERRY also offered the following resolution:

Resolved, That the commissioners of the board of excise of the city and county of New York, be requested to furnish this Convention as early as practicable, with a tabular statement, showing

1. The number of licenses granted by them from the time of the creation of the board to the present time, and the gross amount paid for such licenses.

2. The number of complaints preferred against such licenses during the same period, by whom preferred, whether by citizens or officials, and the result of such complaints.

3. The number of licenses applied for and refused during the same period.

4. The number of licenses revoked during the same period, with a brief statement of the grounds of such revocation.

Which was also laid over under the rule.

Mr. GERRY also offered the following resolution:

Resolved, That the board of commissioners of the metropolitan fire department be and they are hereby requested to furnish this Convention, as early as practicable, with a tabular statement, showing

1. The number of men in the department during the years 1865, 1866 and 1867, respectively, and the amount of salaries paid in each of such years.

2. The number of engines transferred from the old fire department and the number of new engines added during the same period, stating each year separately, together with the cost in each year of such addition.

3. The number of horses in use in each of such years with the cost of the same, and of their keeping.

4. The number of fires which have taken place within the precincts of the department during each of such years, with the statement of the amount of probable loss by such fires in each year, so far as the records of the department show the same.

Which was also laid over under the rule.

Mr. LUDINGTON—Mr. President, by reason of a telegram just received, I am obliged to ask leave of absence to the close of the session, indefinitely.

No objection being made, leave of absence was granted.

Mr. DALY—The Convention by resolution, permitted the use of this chamber to Mr. Sherwood, to be heard to-day on the subject of Free Railroads throughout the United States. In consequence of that resolution, Mr. Sherwood has attended here for the purpose of expressing his views upon that subject; but by reason of the resolution passed this morning it was impossible for him to do so within the very limited period

between the adjournment and hour of re-assembling. It seems to me that it is due in good faith to the gentleman, and is in accordance with the important character of the subject on which he wishes to address the Convention, that we should afford him an opportunity of doing so, and redeem the pledge we have given, relying upon which he has come from his remote residence to this city. If in order, I move that Mr. Sherwood be allowed the use of this chamber to-morrow, between the hours of 3 and 7 o'clock.

The question was put on the motion of Mr. Daly, and declared carried.

The Convention again resolved itself into Committee of the Whole on the reports of the Committee on the Finances of the State and on Canals, Mr. SMITH, of Fulton, in the chair.

The CHAIRMAN announced the pending question to be on the motion of Mr. Alvord to strike out section 8.

Mr. HALE—I wish to amend by introducing in the ninth line, after the word "improvement," the words "belonging to the State." My object in introducing this amendment is that the operation of this section may be confined, as I presume was the intention of the committee, to the public works belonging to the State. The eleventh section, if adopted, would seem to render this entirely unnecessary. If the Convention agree with the Finance Committee that the Legislature should be prohibited from appropriating money in aid of works of internal improvement, not belonging to the State, but works of individuals or associations, or corporations, the eleventh section will accomplish that result, and I do not introduce this amendment with the view of discussing now the propriety of such a prohibition; but I submit to the committee that it is not necessary to prohibit it twice; and the committee having provided in the eleventh section for such a prohibition, the eighth section ought to be so framed as not to cover the same ground. The amendment I propose will be to limit the operation of this section to public works belonging to the State: "No tax shall hereafter be imposed upon the people of the State for works of internal improvement *belonging to the State*, or their debts," etc.

Mr. E. P. BROOKS—To continue my remarks, sir, upon this amendment, I believe it is the true policy of the State to enlarge the locks upon the Chemung canal, so that boats navigating the Erie canal may have access to the mountains of coal, that would be piled up at Elmira and Corning for distribution, mainly to our citizens; the rapidly increasing commerce between two of the largest States of the Union demands it; the convenience and interest of our own citizens require it; and the increased tonnage brought to this canal in consequence of the improvement would fully justify the expense involved in making it. Sir, in my judgment the alternative will soon be presented to the people of the State of either increasing the capacity of the Chemung canal, so that it will be commensurate with the rapidly increasing commerce I have mentioned, or of surrendering up to competing railroads that which it is now struggling to maintain. This canal was originally constructed with a view mainly of accommodating the large lumbering interest in the valley of the

Chemung and adjacent district. It has well fulfilled the expectation of its projectors in this respect; millions upon millions of the finest lumber manufactured in the State, and large quantities of shingle and timber, have found a ready market in this, and other Eastern cities; but, sir, those stately pines and sturdy oaks, that stood in all their primeval grandeur along the banks of this canal thirty years ago, have disappeared, and in their place may be found the busy town, and the highly cultivated fields of the thrifty farmer. The lumberman found a market for his product through the canal; the farmer seeks a market for his corn over the railroad. Now, but comparatively small quantities of lumber pass over this canal, but a better and more profitable trade is fast pressing upon it; better because more permanent and enduring; and more profitable, because comparatively a greater income can be derived from it. At the time this canal was constructed, not a ton of coal was used in all the region of country through which it passed; during the last year over 200,000 tons of coal was delivered on the Chemung canal at Elmira via the Junction canal, and over 100,000 tons were delivered over the Northern Central railroad at the same point; in addition to this large amount of anthracite delivered at Elmira over 400,000 tons of bituminous was transported from Corning over the Chemung canal feeder, and by railroad to Seneca lake, the same season, a tonnage nearly six times the entire tonnage of this canal in 1850. The greater proportion of this immense tonnage was transported by railroads running parallel with and in sight of the canal and feeder their entire distance. The tonnage thus taken by railroad was lost to this canal and the tolls to the treasury, because of the incapacity of the canal. Sir, this proposed improvement is no new-born project—no visionary scheme of the hour. The policy of enlarging the locks on this canal was inaugurated when it was decided to enlarge the locks on the Cayuga and Seneca canal. This canal is but it with the Erie; and the same reasons of public the northern terminus of the Chemung, connecting policy as regards improvement apply to each. You will find that as early as 1836, the State Engineer (to whom the question was referred) made a most favorable report, recommending, in strong terms, this improvement; that report may be found in Assembly Document No. 4, of that year No. 113. The canal commissioner, in his report of that year, also recommended it, as will appear from the same volume, No. 132. I have not the time, sir, to read these reports through, but I beg to call the attention of the committee to them. Again, sir, in 1859, the Senate of this State pronounced to the canal board certain inquiries respecting the enlargement of the locks on this canal. The report of the canal board upon this subject may be found in volume 2 of Senate Documents of 1859, No. 64. I should like to read to the committee the whole of this able report, but I have not the time, and will, therefore, content myself with reading a few extracts from it. At page 3 the board states:

"This canal is but a continuation of the Cayuga

and Seneca, and a large portion of the business of the latter is received from the former, and although the Chemung canal proper is but twenty-one miles in length it secures to a large trade sixty miles of navigation, all of which save eighteen admit of large boats. Taking into account the proportion of the trade brought to the Erie canal at Montezuma, that comes from the Chemung canal, it will be difficult to find a justification for the enlargement of the canal from Geneva to Montezuma, unless it was contemplated to enlarge the Chemung."

Again, they say: "Nearly all the trade brought to the Erie from the Chemung pays toll on the whole length of the Seneca and Cayuga, and on the Erie from Montezuma to Albany." They further say:

"It is believed that were the locks on this canal enlarged to the length and width of the enlarged locks on the Erie, that a small outlay would give five feet of water, with this depth the tonnage of the boats could be doubled. In view of the small additional expense when a lock is to be put in from the foundation, between the large and small locks, when no great increase of depth is provided for, and in view of the importance of this canal, and of the probability that it will call for no immediate increased expenditure, the board do not hesitate to recommend that in reconstructing any lock from the foundation, it should be constructed of wooden walls of the length and size of the locks on the Erie canal, with reference to five feet depth of water."

Still again, in 1864, the importance of this improvement was brought to the attention of the Legislature, and a bill providing for making the same was referred to the canal board for the opinion of the board as to "propriety and necessity" of enlarging these locks. The canal board, in their report, which may be found in Senate Documents, volume 4, 1864, No. 64, after giving a tabular statement of the tolls, tonnage and lock-ages on this canal as compared with the Oswego and Erie, say:

"As the necessity in 1867 for enlarging these locks seemed so great as to justify the canal board in saying, 'the board do not hesitate to recommend that in reconstructing any locks from the foundation it should be constructed with wooden walls, of the length and size of the locks on the Erie canal, with reference to five feet depth of water.' This board does not see that such necessity has decreased, or is likely to decrease in years to come."

Following this report, the same year a bill was passed by the Legislature providing for rebuilding these locks of the enlarged size. This will be found at chapter 232 of the Laws of 1864; but, sir, that bill, although it became a law, was inoperative.

Mr. FOLGER—Why inoperative?

Mr. E. P. BROOKS—Because, by the provisions of the present Constitution, the canal revenues could not be applied in payment of the expenses of such a work. Later still—at the last session of the Legislature—a committee appointed by the Assembly to investigate the charges against the "coal monopoly," as it was called, after examining the principal coal dealers and shippers doing

business in middle and western New York, with reference to the alleged grievance, made a report to the Legislature upon that subject. I beg to read an extract from their report, which may be found in Assembly Documents of 1867, No. 160. This committee say:

"In concluding, the minority of the committee would state that the testimony taken shows that the coal mines of Pennsylvania are inexhaustible; that the consumption of this article for domestic, steam and mechanical purposes is on the increase in a rapid and astonishing ratio; that its consumption will continue to increase and prices cheapen as facilities are multiplied to bring it in greater quantities from the mines.

"And the minority of the committee deem it proper to further state that the testimony taken shows that Elmira, from its proximity to the mines, and its connection by lines of transportation therewith, has for a long time been and must continue to remain a depot for the reception of large amounts of coal; that it will be cheapened as facilities are increased for its transportation in greater quantities. And the minority of the committee are of opinion, based upon the evidence before them, that the enlargement of the Chemung canal should be included in any general plan which the Constitutional Convention soon to assemble, may adopt for the improvement and extension of any of the public works of this State."

I submit, sir, that I have shown by abundant and indisputable evidence the propriety and the expediency of improving the capacity of this canal. I have sought to do this by evidence rather than by assertion unsupported by evidence. I appreciate all that has been urged in behalf of the improvement of the Erie canal. I do not undervalue the importance of retaining through it, to the State, the growing commerce of the West; but I believe, sir, that the matter of cheap fuel, to be brought to the doors of our own citizens through the Chemung and Chenango canals is of as much importance to them as the transportation of Western flour through the Erie canal. There are other interests to be considered beyond the tow-path of the Erie canal, and beyond the subjects discussed by the "ring," that seems to be formed by distinguished gentlemen; and whose sparring exhibitions have contributed to the amusement, as well as the instruction of the friends of the lateral canals. It should be remembered by gentlemen interested in the improvement of the Erie canal, that it may be desirable also to improve the lateral canals; the people of over forty counties are directly interested in them, and they will be found to be "a power in the State." Had I the time, sir, I think I could clearly demonstrate that the increased tonnage that would be brought through the Chemung canal by the enlargement of the locks would in a short time pay in tolls the cost of the improvement. Sir, there was sold last year, to citizens living west of Syracuse, over 300,000 tons of anthracite coal. If this coal could have been transported all the distance from Elmira in large boats, the citizens of this State would have saved, in the cost of transportation alone, in this

one year, over \$150,000. In view of the rapid increase in the consumption of this article, I ask you to estimate the amount that would be saved in the short space of ten years, if proper facilities for transit be provided. Are not the citizens of the State a part of the State, and are not their interests to be regarded and taken care of? I believe this improvement will demanded, is now demanded, and I therefore hope that this section, which would prevent it, may be stricken out.

Mr. BICKFORD—I had intended to offer a few remarks in advocacy of State aid to railroads which would perhaps be most appropriate under the eleventh section, but as the principle is involved in this eighth section I will meet the matter on the threshold and make my remarks here. In our day railroads have superseded canals, and, in a great measure, inland steam navigation, in affording facilities for travel. And, except on great lines of communication and for heavy articles, they have superseded canals as the means for the transportation of property. They are one of the imperative demands of the civilization of the age. Their cost is much less than that of canals, and they are more desirable in many respects. And the resources of the State cannot be fully developed unless a railroad shall penetrate into every neighborhood, so that no considerable portion of the people shall be, to exceed, ten miles from a railroad station. Now, except on great thoroughfares, capital is not easily obtained to build the railroads needed, for the reason that the stock may not be a good investment. But the benefits which the roads confer on the regions through which they run do not depend on the value of the stock. Provided only that the road be built and operated, the public benefit is secured, the value of land is enhanced, population is multiplied, business is increased and wealth accumulated, and the convenience, enjoyment and happiness of the people augmented. And if population and material prosperity be increased in any portion of the State, the State at large is benefited. The greater the wealth and population in St. Lawrence county, the lighter the taxes in Suffolk county. New York city, more particularly, will be benefited by any possible railroad to be built in the State, for all will point to that great focus of trade and travel. The State has heretofore granted its aid to railroads. It is one object of this section—a prime object of the 11th section to prohibit such aid in the future. I am opposed to this prohibition; partly because I deem all unnecessary prohibitions unwise. But this is a prohibition of what may be most just, most beneficial, and greatly for the public good. I see no objection, in point of principle, to the State giving its aid to railroads. If the aid be given judiciously, timely, and justly, I think it can be abundantly justified. First, on the score of equal justice to all parts of the State. The Erie canal, was and is a blessing of incalculable magnitude. But its benefits were not equally distributed. And when the State gave \$3,000,000 to aid in constructing the Erie railroad, the gift was justifiable I think, on the score of justice to the southern tier of counties. So as to aid granted to the Susquehanna road and to the Whitehall and Plattsburgh road. I cannot see

that the State was unjust in taxing the people, and my constituents among the rest, for the purpose of giving these aids. *The injustice consists in stopping now.* The State should, like a kind and just father, go on and equalize its beneficence. Instead of repeating the good already done, it should do more, as it has opportunity. Sir, this Convention has forbidden counties, cities, towns, villages, and all other territorial divisions of the State, to aid in building railroads, and has forbidden the Legislature to authorize them to do so on any conditions whatever. And now, having peremptorily forbidden all local subordinate communities to help themselves, the State proposes to declare it will never do anything itself to aid these destitute localities. Sir, this is cruel. It is the worst policy imaginable. It is like the foolish parsimony of a stingy, tight-fisted father, who refuses to give his hard-working boy any spending money, even twenty-five cents to buy fire-crackers and gingerbread on the 4th of July; and then will not permit him to work a day for a neighbor to earn a little spending money himself. [Laughter.] I have known some such fathers, and their miserable policy resulted in their boys becoming thieves and vagabonds. But, sir, what is proposed here is even worse than this. A perfect parallel would be that of a father who had given spending money freely to one boy, and should then refuse to give any, or any chance to earn any, to his other boy. And what would you think of the boy who, having thus received liberally of his father's bounty, should encourage his father to give nothing to his brother and should refuse him any share of what he had himself? There are some gentlemen here who would do well to consider whether they are not acting the part of such a selfish and ungenerous boy. [Laughter.] Sir, if it was wrong, as some gentlemen say, to commence taxing the people of the whole State to aid in building railroads in particular sections, that wrong cannot now be redressed by stopping the practice. "Turnabout is fair play" the world over. That was one of the first lessons I learned when I was a boy. The State has taxed Jefferson county to build a railroad in Schoharie county. [Laughter.] Now tax Schoharie county to build a road in Jefferson county. It is sometimes said that two wrongs do not make a right; but they sometimes come nearer to it than a single wrong. But taxation to aid railroads is not the only thing forbidden in the eleventh section and other sections proposed. They forbid such aid with the money or property of the State, however acquired. Why would it be wrong to set apart a portion of the canal revenues for this purpose? I cannot see. The people have been taxed for the canals some \$18,000,000 more than they have returned to the treasury. As this money shall be returned, why not apply a portion of it to aid railroads in sections which are destitute of them, and need them, especially when such roads will be a benefit to all the State, as every railroad is? Will some wise gentleman take pity on my ignorance and tell me? I think, sir, that I have shown that State aid to railroads may be rightfully granted on the ground of justice, and also on the ground that it is, or may be, for the interest of the State,

as a State, by adding to and developing its resources and increasing the taxable property of the people and their ability to pay taxes. And I say, in the third place, that it is justifiable on the score of beneficence. I hold that government may rightfully be beneficent; may so act as to promote the general prosperity and happiness of the people. I go further, and say that it has no right to refuse to be beneficent. I arraign that government as unjust which persistently refuses to aid the people in advancing their prosperity and happiness; and especially and emphatically charge that government to be tyrannical and unworthy of a free people, which will neither act for itself nor permit the people composing local and subordinate communities to act together to promote their material prosperity or to ameliorate their condition. And I do this on the unanimous authority of the fathers of American liberty, and of the framers of previous American Constitutions. The Declaration of Independence asserts, as a "self-evident truth," that the people have a natural and "inalienable right," derived from the Creator, to such a government "*as will best promote their prosperity and happiness.*" And it says that George III, "in refusing his assent to laws the most wholesome and necessary for the public good"—"in refusing to pass other laws for the accommodation of large districts of people"—"in attempting '*to prevent the population of the States*'"—and "in combining with others for cutting off our trade with all parts of the world"—was "guilty of acts which define a tyrant," and which made him "unfit to be the ruler of a free people." Such is the doctrine of the Declaration of Independence. Gentlemen will do well to read it occasionally [laughter]; or, at least, take heed to what is in it, when they hear it read on the glorious 4th of July. It is not "a string of glittering generalities," as some have called it, but it is clear enunciation of the true principles of liberty. The first Constitution of New York, adopted in 1777, recites that the delegates to the Convention which passed it had, "by the suffrages and free choice of the people, been appointed, and among other things authorized to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this State, *most conducive of the happiness and safety of their constituents in particular, and of America in general.*" The Constitution of Virginia, formed in 1776, declares that "of all the various forms of government, that is best which is capable of producing *the greatest degree of happiness and safety.*" Massachusetts declared in her Constitution, formed in 1780, that "government is instituted for the common good; for the protection, safety, *prosperity and happiness of the people.*" All the early Constitutions, with varied expression in substance, declare the same objects or ends as those for which governments are instituted, "or should be," as the Constitution of Virginia declares. In all this the fathers followed the teachings of Divine inspiration; that "wisdom which is from above, first firm, then peaceable, gentle, easy to be entreated, full of mercy and *good parts, without partiality, and without hypocrisy*" Inspiration declares that human government is

the "ordinance of God," and that rulers are the ministers of God for the punishment of evil-doers and the praise of them that do well. And as God is infinitely good and benevolent in His rule, so those human governments are the most perfect and most in harmony with His will which most closely imitate the beneficence of the Deity, "who gives us richly all things to enjoy." "David, the son of Jesse, said, and the man who was raised up on high, the anointed of the God of Jacob, and the sweet psalmist of Israel, said, The spirit of Jehovah spake by me, and his word was in my tongue. The God of Israel said, the Rock of Israel spake to me; He that ruleth over men must be just, ruling in the fear of God, And as the light of the morning when the sun riseth, even a morning without clouds; as the tender grass springing out of the earth by clear shining after rain." (2d Samuel, xxiii, 1-4.) Here, by the most lively and vivid pictures, is presented to the mind's eye the beneficence and goodness of that government which is truly just. Such a government diffuses happiness and prosperity all abroad among the people, like the blessed light of the impartial sun, which the good God makes to shine on all, on the evil and on the good, and like the vivifying rain which He sends upon the just and upon the unjust. Such a government, by its beneficent action, shows that it is truly "ordained of God." King Solomon received the instruction which David gave by the divine spirit, and God also gave him "wisdom and knowledge and largeness of heart" to rule over men with success. His long reign of forty years was promotive of the most wonderful material prosperity of the people. It was magnanimous and beneficent, and therefore just and prosperous. He assiduously maintained peace with all the neighboring nations, wasting none of the nation's resources in war. He cultivated and encouraged literature, the natural sciences, and every liberal art. He fostered every department of industry and stimulated the enterprise of the nation to the utmost. He engaged largely in public works of taste and of utility. He built a magnificent temple, splendid palaces, cities for defense, store cities, chariot cities; Tadmor in the wilderness, Beth-horon, Upper and Nether, Millo and Baalath—cities in Galilee, in Lebanon and in Arabia. Jerusalem he enriched, adorned and magnified. A capacious aqueduct supplied it with water fresh from the fountains which gushed from the hills south of Bethlehem. He made pools of water to please the eye and to irrigate the land. He encouraged commerce. The sails of his ships whitened every known sea, and his caravans penetrated to every known nation. He planted, and encouraged the people to plant, vineyards, gardens, orchards and olive yards. He stimulated the raising of cattle and horses and the improvement of stocks. Under his just, magnanimous and beneficent reign all was activity and thrift. The nation reached the summit of prosperity and glory. Gold was like the stones of the streets for plenteousness, and silver was so abundant as to be little esteemed.

Mr. ALVORD—Will the gentleman allow me to interrupt him to ask him a question?

Mr. BICKFORD—Certainly, sir.

Mr. ALVORD—I wish to know whether he is talking about Solomon or David.

Mr. BICKFORD—Solomon, sir, the wise man. The Queen of Sheba heard from afar off the glory of Israel and her king.

Mr. SEAVER—Will the gentleman allow me to ask him a question? Were these improvements paid for by public taxation?

Mr. BICKFORD—Yes, sir; and so great was the prosperity of the land that gold was like stones for its plenteousness, and silver was so abundant it was little esteemed.

Here the gavel fell.

Mr. BICKFORD—Has my time expired?

The CHAIRMAN—It is nearly out.

SEVERAL DELEGATES—Go on, go on.

The CHAIRMAN—The gentleman can proceed if no objection be made.

Mr. BICKFORD—The Queen of Sheba made a long journey to hear his words of wisdom and to see the results of his wise policy. When she had surveyed them—

Mr. RATHBUN—I move that the committee do now rise, report progress and ask leave to sit again.

Mr. ALVORD—I rise to a question of order—that the gentleman from Jefferson [Mr. Bickford] having the floor the gentleman from Cayuga [Mr. Rathbun] cannot make this motion until the gentleman yields.

Mr. RATHBUN—The gentleman from Jefferson [Mr. Bickford] is not now in order, his time having expired.

The CHAIRMAN—By unanimous consent the floor was awarded to the gentleman.

SEVERAL DELEGATES—Go on; go on.

Mr. BICKFORD—When she had surveyed his vast public works—

Mr. RATHBUN—I was in time, before the vote was taken on granting leave to go on, and I rose and took the floor for the purpose of making this motion.

Mr. CHESSEBRO—I rise to a question of order. That the chairman having stated if there was no objection the gentleman from Jefferson [Mr. Bickford] could go on, and there being no objection, the gentleman is entitled to the floor, and this motion is now too late.

The CHAIRMAN—The gentleman was awarded the floor by unanimous consent of the Committee, and the point of order is well taken. The gentleman from Jefferson will proceed.

Mr. BICKFORD—When she had surveyed them her heart sank within her, and she exclaimed, "The half was not told me." Such is a mere outline of the happy results of government when it is conducted according to those benevolent principles which are of divine origin. Such the results of a policy at once beneficent and just even in an age comparatively primitive and rude. Our fathers framed for New York a beneficent and just government. It did not trammel the power of the State to do good, or check the enterprise of the people. The immortal De Witt Clinton, gifted in a good degree with the wisdom and largeness of heart of Solomon, perceived the beneficence of internal improvements. To the energies of a free people, not clogged, but directed by a just government—just because beneficent—

we are indebted for our magnificent system of internal improvements, which have made "the wilderness and the solitary place to be glad, and the desert to rejoice and blossom as the rose." Through these arteries flow the life-blood of the State to and from the great heart of the State and of the nation which pulsates on Manhattan island. The State of New York imitated the wisdom of Solomon, and achieved a prosperity similar to that of the people who were ruled by the wise man to whom God gave "an understanding heart." But Solomon at last "slept with his fathers," and wisdom departed from both prince and people. The people murmured because the taxes were high. They said to Rehoboam, "Thy father made our yoke heavy: did thou lighten our yoke." Yet the people never paid taxes so easily as under the reign of Solomon. So the people now complain, to some extent, of high taxes; but they never felt taxation so lightly as now. The nominal amount of taxes is no criterion to judge whether they are high or not. It is their proportion to the earnings of the people which determines how burdensome they are. The man whose income is \$10,000 can pay \$1,000 in taxes more easily than he who earns only \$1,000 can pay \$100. Under Rehoboam the dissatisfaction of the people resulted in secession and civil war, which consumed the resources of the people, and the greatness and the glory and the prosperity of the Hebrew nation rapidly declined, and finally were extinguished forever. I hope it may not be so with us. I hope our government may continue to be both just and good, and that the people will appreciate it, and that their prosperity may continue and be augmented. And to that end I mean to strive, as well as I can, to keep from the Constitution all such restrictions on the power of the government as that contained in this most unwise and unjust section. Sir, the people of this State may continue to be prosperous and happy if they will. But to that end they must take care that their government must continue to be beneficent, even more so than it has been for the last twenty years. By doing this we may go on in an accelerated career of prosperity; or we may, if enough perverse and short-sighted, pursue a different course. We may shut the gate of beneficence, and say, if we are so unwise, that the State shall do no more for canals, no more for railroads; and that no county, city, town, village, or other territorial division within this great State, shall henceforth do the least thing for internal improvement or to develop the resources of the country, to get or retain the commerce of the world, or to promote the material prosperity of the people. We may thus suffer other States to outstrip us. We may surrender our natural advantages to States whose governments are more beneficent, and whose people are more enterprising. We may, if we are brutish enough, assume that the only legitimate ends of life are what some have declared them to be—

"To eat, and to drink, and to smoke."

[laughter] and make a frame of government designed only to protect our persons and the property we already have. But we must not flatter ourselves that such a frame of government will be either wise, or just, or good.

Sir, there is a wrong tendency of sentiment among certain members of this Convention, against which I protest with a thorough earnestness of conviction, and with as much force as I can command. This tendency is to make a restrictive Constitution under which the government has no power to do good. It is the barn-burning spirit of 1846 extended and intensified. It first showed itself here in the proposition to forbid certain railroad consolidations. A necessity may arise for such consolidations. The public interests may suffer greatly for want of them. Yet a majority have voted to prohibit them, however pressing the necessity may be. Next a majority voted to forbid the Legislature to pass any law allowing any territorial division of the State to take stock or be interested in any corporation. The local necessity for what you prohibit may be urgent. Large districts of people may suffer greatly for want of it. Yet you deny all power to grant relief. Now, we have other proposed restrictions. The article under consideration is full of them. The Legislature is to be restricted as to improving the canals and as to the use of the money of the State not needed to pay its debts. The State must not aid railroads or other corporations, however just and beneficent such aid may be. There are many other similar restrictions proposed. They are all unwise and pernicious. They amount to a denial of power to do what the public good may require. They are of the very nature and essence of tyranny, as I showed before. And I tell you, sir, that the kind of Constitution which some gentlemen are proposing will not go. You have no right to form such a government. To tie up the State and all its subordinate communities with fetters of brass and iron, so that none of them can do what is needful for the public good, is downright tyranny, of the worst kind. If you offer the people such a Constitution they should reject it with scorn. If they are true to themselves and to the principals of liberty and free government, they will. But if they are so forgetful, or so heedless, as to adopt such a deadening, fettering, hampering, trammeling, shackling system of fundamental law, they will show that they have so far degenerated from the free and enterprising spirit of their ancestors as to be worthy to bear the heavy chains you have forged for their limbs. And then, the genius of New York, whose exalting motto has heretofore been "Excelsior," will retire with her head bowed with shame and sorrow, and with her hand pressed upon her sad and broken heart will exclaim:

"Farewell! a long farewell to all my greatness."

What is needed in this State, as in all States; is a government which has power to do what is requisite for the public good. Then, place the government in proper hands, and all will be well. We should do all we can to insure the election of good men—the best we have in the State—to the Legislature. To that end we should make a seat in the Legislature an object of ambition to men of the first position and talent. The gentleman from New York [Mr. Tilden] spoke the other day, with pride, of certain restrictions he had assisted in placing in the Constitution of 1846. I conceive, sir, that emotions of shame, rather than of pride,

would be more appropriate. The Constitution of 1846 is unworthy of this great State. The Legislature provided for in it is one in which the gentleman does not want to sit. He holds himself above it, and has for the last twenty years. The Constitution treats the Legislature as an underling, smubs it, belittles it, degrades it, casts contempt upon it. A body which should be most honorable and highly esteemed, the Constitution declares in effect, is not fit to be trusted. And now, gentlemen around me propose to go still farther in this wrong direction. It will not do. Let us take care for a good Legislature, one worthy of confidence, and then repose confidence in it. Put no shackles on your government to hinder its beneficent action. Above all, do not require it to act the part of the dog in the manger, refusing itself to act for the common good, and forbidding all subordinate communities to promote their own prosperity. Adopt no permanent policy in your Constitution, in regard to canals, railroads, public buildings, cities, educational bodies, charities which you may see cause to regret, or which may need modification. Remember that the affairs of the State are the affairs of the people. Let the men chosen by the people manage those affairs. Government is the embodied power of the people. It is the manifested sovereignty of the State. It should not be a King Log, to lie idle, and do nothing, and thus invite the contempt of its subjects. Nor should it be a King Stork to devour its subjects. It should act for the good of the whole State, and for each portion of the State, as necessity may require. Nor should the power of the State be surrendered or abdicated. The State may, and should, allow subordinate communities to govern themselves and provide for their own wants and necessities so far as the public safety will permit. But it should retain its control over all parts of its territory, and over all its people. It has "a giant's strength," which it is "excellent to have," though "it is tyrannous to use it like a giant." It is a strength given to be used, but not abused. It should be used for protection, not for oppression. It should be used for the public good—for the general prosperity and happiness—not to hamper and obstruct the energies of the people, nor to impede sections and localities in their efforts to improve their condition or develop their resources; but to afford timely and judicious aid; to give strength to the feeble protection to the weak, succor to the falling, justice and equal advantages to all. And we should remember that the strong giant—the people in their organized capacity—will not consent to be long shorn of his strength. He is not willing to be "bound with fetters of brass," and to "grind in the prison house," or to make sport for the lords of the Philistines—lazy, inefficient and corrupt office holders, if you please. He desires to "go out as at other times before, and shake himself." And his beard will grow, however close you may shave it. "Young America" is coming on the stage, conscious of inherent power. He wants to show what he can do. If the giant's eyes are put out, he may, some day, turn blindly upon what was once the temple of Liberty, but which you are seeking to convert into a prison house, or the temple of some abominable Dagon, half man, half

sea monster, and placing his powerful hands upon the pillars, like Samson Agonistes, he may "bow himself mightily," and bring the once proud fabric in ruin to the ground, crushing beneath it, in its disastrous fall, both himself and those who thought to hamper and imprison the mighty energies which God had given him. Mr. Chairman, I am much obliged to the committee for the opportunity to conclude my remarks.

Mr. OPDYKE—The question now before us for consideration is, as I understand it, a motion to strike out the eighth section. I am opposed to the adoption of the motion, and I desire, in the first place, to bring before the committee more distinctly than has yet been done the precise object of that section, and the effect it will produce if adopted. I refer to the latter part of the section; the first part of it is rendered unnecessary by our action on the preceding sections. The latter part of the section is designed, in direct terms, to prohibit the Legislature from appropriating money, or raising it by taxation, to be used in internal improvements. The Constitution of 1846 prohibits the Legislature from borrowing money for such purposes unless it has first obtained the consent of the people. By an omission, or an oversight, it left open the door so that the Legislature could reach the public treasury, or rather the tax payers, by appropriating money, raising it immediately by taxation for purposes of internal improvement. It was the opinion of the committee that this oversight or omission in the financial article of the present Constitution had been attended with injurious consequences. Much money has been raised for purposes that have not been remunerative, and it has increased taxation to such a degree that the people, if they had been required to give their consent, would never have done it. I believe it is quite as necessary to restrain the Legislature from raising money by taxation, and appropriating it for purposes of internal improvement, as it is to prohibit its borrowing money thus appropriated, unless, in both cases, it has the previous sanction of the people. I think there can be no doubt that if this section should be stricken out, and the power thus left with the Legislature to tax the people and to appropriate money—to tax the people without their consent for such purposes—there would be great danger that, through a combination of various interests, these interests would be enabled to get through the Legislature an appropriation for this public work, another for that, and so on, until the aggregate would amount to a large sum of money, but neither of which if presented singly, would present merits enough to receive the sanction of the Legislature or the people. Again, if this section be stricken out, we lose the advantage of that provision in the fourteenth section which declares that every law intended to raise money by loan, for purposes of internal improvement, not only shall require the previous assent of the people but that the proposition shall be strictly limited to a single work or object. So with regard to the Legislature. Each law is limited to a single object and that to be declared in its title. But, sir, the various canal or railroad interests of the State might combine and each present a separate

bill with the understanding that the friends of each separate bill shall vote for all—in other words, “log-rolling” legislation would be the result. I fear that the people would be thus subjected to taxation to a degree which they would not, if asked, in any degree sanction. My desire is that the committee should know the precise object to be attained by the section. If it be the judgment of the committee to continue that power in the Legislature, to tax the people for internal improvements, to whatever extent it may see fit, I can only say that their judgment differs from mine; and I have not the slightest doubt that it differs widely from that of the people. I have no idea that the people will approve the action of this Convention, if it strike out the safeguard, which I deem as essential as any other that the article contains; and I do hope that the committee, understanding its precise effect, will agree with me in judgment and retain it.

Mr. MURPHY—I have listened to hear a sufficient reason for the retention of this clause from the gentleman who has just taken his seat [Mr. Opdyke]. The honorable gentleman says that it was an oversight in the Constitution of 1846 that it did not provide that the Legislature could not grant subsidies in aid of public improvements. Sir, it was no oversight. The object of that Constitution was, first, that the credit of the State should not be granted to corporations, or debts contracted on the part of the State by means of loans for railroads and other public improvements which might be carried on by private companies. It was then supposed that the people of this State were quite competent at any time to determine whether they would or would not give directly the aid of the State in support of any corporation, or support of any improvement which might be carried on by a corporation or otherwise. When taxation comes before the Legislature, that body, speaking for the people, is competent to say whether the people will bear it for the purposes intended, and vote under a full responsibility to their constituents. Besides, we have not here, sir, to-day, all the wisdom of the State of New York for twenty years to come. We cannot say now what may or may not be expedient in this respect five, ten, fifteen or twenty years hence; but, believing in the intelligence of the people, I consider it safe to leave it to them to decide whether it will be expedient or not to give aid to any public improvements. It was thought in 1846 there was some virtue in the people, and in their representatives. I am one of those who believe that our State governments are instituted for the purpose of developing the resources and advancing the interests of the State, of encouraging the different departments of industry, and aiding those sections of the State which are not able always to aid themselves, as well as for the general purposes of government. The only reason that I have heard for the adoption of this provision is, that the Legislature is not to be trusted. Why, sir, does not the responsibility of voting a tax fall upon the members who vote for it? Must they not answer to their constituents if they do not express their views? And what more effective check can there be upon improper legislation in competent matters than this? I beg members

not to run so violently into the opposite direction, putting the Legislature in a straight jacket, without any power to prepare any act of beneficence, as the gentleman from Jefferson [Mr. Bickford] has expressed it, toward the people of any portion of the State. The gentleman from New York [Mr. Opdyke] said that if this section be stricken out we will lose the benefit of the fourteenth section of the report of the committee. I do not see how. I do not see what relation the one section bears to the other. The fourteenth is a provision in regard to contracting debts alone; this provision relates to a present existing gift or subsidy to be made by the State by immediate taxation. There was great force in what fell from the gentleman from Jefferson [Mr. Bickford]. You have deemed it a proper policy to restrict cities, towns and counties from giving aid to these corporations and companies. It is a principle to which I give my hearty accord. But, sir, I think we may trust the state in its sovereign assembly, or at least the collective representation of this State to determine whether or not it will, as heretofore, aid localities out of the public treasury. Such aid judiciously extended often returns to the State tenfold—a hundred-fold to the amount given. Adopt all the restrictive provisions that have been submitted as well by this committee as by the Committee on the Powers and Duties of the Legislature, and there will be nothing left for the Legislature to do except to pass a few appropriations to pay salaries of State officers and others. All the beneficent powers of the government will be taken away, and nothing can be done except by an amendment of the Constitution or by a special submission to the people. Have the people called upon us to transfer these powers? Have they declared that they are not capable of speaking through their representatives upon these questions? I think they do not expect from us any such restrictions as are here proposed. I shall vote for striking out the section.

Mr. HARDENBURGH—As one of the members of the Committee on Finance I signed this report, and among other sections this section. I confess that I am extremely anxious to retain that portion of it that is contained in the amendment of the gentleman from Cayuga [Mr. Rathbun]. And since my friend from Kings [Mr. Murphy] has asked for a reason—while thinking that almost every member upon the floor, who has spoken in favor of the retention of that provision, has given sufficient reason—I will give him my reasons very briefly. Now, while it is true this restriction was not contained in the Constitution of 1846, and it is incorporated here, and while the committee desire it to be retained by this Convention, as we are quite sure it will be adopted by the people, still I would ask, who are, in respect of this provision, the warmer friends of the people? When the members of your Legislature are selected and sent here, is it for the purpose of granting a bonus to some canal or some railroad, or to any project in the State? By no means. They are sent here for no such purpose. But, when they get here, in Senate or Assembly, the project is started, for the first, before the representatives of the people, and the people have no voice in any

vote in respect to it. All this section provides for is, that when a project is presented to the people, that requires a tax from the people of the entire State, that the people shall have the right to vote on it, and that the Legislature shall frame the act, and send it to be signed and subscribed to by their constituents, who, then, for the first time, will have had an opportunity to speak on the subject. I repeat, you do not send your representatives here for any such purpose. I ask and implore gentlemen to look at it in this light. It was with no view to take away from the people of this State the power to grant any sum of money they please to any corporation, or any canal, or any extension of any canal; but, after the bill is framed, the committee did insist that it should be submitted to the people, and that their voice should be heard upon the subject. That is all there is in this provision, and gentlemen fail, I think, in their duty, if they do not incorporate it in the organic law of the State.

Mr. SPENNER—When I rose a short time since, it was merely for the purpose of calling attention to a fact in addition to those stated by the gentleman from Chemung [Mr. E. P. Brooks] showing the mischievous effects of the provision now under consideration, in case it is allowed to become a part of the Constitution. This fact relates to the production and transportation of coal—one of the necessities of life. I believe it is true that, in order to maintain a market for the coal which is brought from the southern part of the State, and is transported by the Chemung canal, it pays only half the amount of tolls, on reaching tidewater, that it does when delivered in other parts of the State. Therefore, if transportation is cheapened by the improvement of the canals, or any part of them, the market will be extended in proportion, and the State can, with the extended market, impose the usual and full tolls upon the coal reaching tide water, where it comes in competition with coal from the Cumberland mines and from Nova Scotia. I desire to say a single word in regard to the general question which has been discussed. If gentlemen will look at the past history of the State, it will be seen that if there is any cause to which this State owes its great prosperity, to which it owes its superabundant wealth, to which it owes its pre-eminence among the other States of this Union, it is the protecting and fostering care which has been extended to public improvements. You may take the State from one end to the other, and whenever those improvements have been encouraged by the State, by its aid and by its assistance, were you will find abounding evidences of great prosperity. Not only that, but this policy has contributed directly to the revenues of this State. Allusion has been made, during the discussion, to a railroad up somewhere near Corning, and it has been said that the State once loaned its credit to a railroad there to the amount of \$70,000. That is true. I believe about \$20,000 has been paid, so that the debt to the State from this institution is now about \$50,000. Well, sir, the loan of the credit of the State to that corporation to the amount of \$70,000 has been the means of paying directly into the treasury of the State, through the revenues to its canals, an amount equal to

five times that sum; and the investment is now worth, even if the State had given it away, or had released its lien upon the railroad, or had abandoned all claim to it, a million of dollars by means of its contributions to the tolls of the canals, and thus to the direct revenues of the State. I will mention another instance. There has been a great clamor, almost since I can remember, in regard to the loan of the credit of the State to the Erie railroad, the claim for which was finally refused by the State. I do not know how far the release of that loan by the State contributed to the final completion of that great work. I do not know that it would have been completed as it is now, and equally as soon, if the loan never had been made and if it had never been released; but I believe it would not. Now, what have you in consequence of this aid to the Erie railroad? You have a direct line of railway through some four or five hundred miles of the State. Its actual, intrinsic value, as a part of the property of the State, is not less than \$50,000,000. This work has led to the construction of lateral and connecting railroads worth \$50,000,000 more; and, thus, by the aid of that contribution of the credit of the State, we have an addition to the property of the State of fully \$100,000,000. These instances might be multiplied all over the State. How was your great Central railroad built? Not by private means alone, as gentlemen would compel us to build railroads now, but portions of it were built through the aid of the State, by the loan of its credit. The Auburn and Rochester railroad, the Tonawanda railroad, Auburn and Syracuse railroad, and the railroad from Troy to Schenectady, all parts of that great line of railway, were constructed by the aid of the State. It is true, the State never lost anything by that aid; but no matter for that. If the State had given it away it would nevertheless have been the gainer. How much is saved everyday by the citizens of this State in their travel and in their traffic. No arithmetic can compute the amount; and I insist upon it, that we shall not, after having pursued this policy for so long a period and with such results, abandon it now.

Mr. CONGER—I would like to say a very few words, but it is so near the hour of recess that I shall move that the committee rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Conger, and it was declared carried, on a division, by a vote of 44 to 23.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. SMITH, from the Committee of the Whole, reported that the Convention had had under consideration the reports of the Committee on the Finances of the State and the Committee on Canals, had made some progress therein, but not having gone through therewith, had directed their Chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. KINNEY moved that the committee take its usual recess.

The question was put on the motion of Mr. Kinney, and it was declared carried.

So the Convention took a recess until half-past seven o'clock.

EVENING SESSION.

The Convention re-assembled at half-past seven o'clock P. M.

Mr. ROGERS—I ask for the call of the roll.

The SECRETARY commenced calling the roll.

Mr. MERRITT moved that the call of the roll be suspended.

The question was put on the motion of Mr. Merritt, and the vote, on a division, was declared to be 27 to 13.

A DELEGATE—There is no quorum voting.

Mr. ROGERS—I insist upon the call of the roll, and demand the ayes and noes on it.

Not a sufficient number seconding the call, the ayes and noes were not ordered.

Mr. ROGERS—I insist upon the call of the roll.

The SECRETARY proceeded with the call of the roll, and the following members responded to their names:

Messrs. A. F. Allen, Alvord, Andrews, Archer, Artell, Barto, Beadle, Beckwith, Bell, Bickford, E. Brooks, E. P. Brooks, J. Brooks, Burrill, Champlain, Chasebro, Church, Clarke, Colahan, Comstock, Conger, Cooke, Corbett, Curtis, Daly, C. C. Dwight, T. W. Dwight, Ely, Endress, Everts, Farnum, Ferry, Folger, Fowler, Fuller, Fullerton, Garvin, Gerry, Grant, Graves, Greeley, Hadley, Hale, Hammond, Hand, Hardenburgh, Hatch, Hitchcock, Hitchman, Houston, Kernan, Ketcham, Kinney, A. Lawrence, M. H. Lawrence, Lee, Loew, Mattice, McDonald, Merritt, Merwin, Miller, Monell, Morris, Murphy, C. E. Parker, Pierrepont, President, Prindle, Rathbun, Reynolds, Rogers, Root, Rumsey, Schell, Seaver, Smith, Stratton, Tappen, S. Townsend, Van Cott, Wakeman, Wales—83.

The Convention again resolved itself into Committee of the Whole on the reports of the Committees on the Finances of the State and on the Canals, Mr. SMITH, of Fulton, in the chair.

The CHAIRMAN announced the pending question to be upon the amendment offered by the gentleman from Essex [Mr. Hale].

Mr. CONGER—I confess I was somewhat surprised that my honorable friend from Kings [Mr. Murphy] should have announced that he felt called upon to inquire of the Committee on Finances some reason for the retention or the original insertion of the clause which is now moved to be stricken out. I supposed that my friend, so well versed in the doctrines which Jefferson laid down with regard to the fundamental principles and objects of government, would hardly need any citation of authority from the sources with which he had shown himself so thoroughly familiar. My honorable friend said, if I mistake not, before he took his seat, that he was disposed in this matter to follow the honorable gentleman from Jefferson [Mr. Bickford]. I hardly suppose this could be taken as a sufficient reason why my friend from Kings should have questioned the propriety of the insertion of this article by the committee. I do not propose to go into any remarks upon the

general powers of government over such a subject as this; I only wish to allude to this question in its its practical relations. Suppose you say that you will henceforth put no barrier to legislative power of taxation for the purposes of internal improvement, I ask what is the use of the barrier you put in your Constitution when you say that you will not allow the Legislature to create a debt exceeding one million of dollars without submitting the question of the creation of that debt to the people? Do you mean to say that you will not permit a debt to be created, the payment of which is not to be fully provided for within eighteen years, and, at the same time that you will not allow the Legislature to create a tax which may exceed the amount of the debt, and throw the whole of that tax upon the people in one year? This is the plain, practical question. By the provision of the Constitution of 1846, which is proposed to be retained by the committee, you debar the Legislature from creating a debt exceeding one million of dollars for all purposes, unless they submit the question of the creation of that debt by a bill to the people. Now suppose they desire to create a debt of two or three millions of dollars for canal purposes. Under the Constitution, they submit that to the people with a provision that the debt, principle and interest shall be paid in eighteen years. The amount of taxation that is to be thrown upon the people annually for each of the eighteen years, for the payment of that sum, is comparatively light. But unless you inhibit the Legislature from taxing, they may levy a tax for the whole of that sum in one year. Gentlemen may say that is very preposterous, for what Legislature would tax the people two or three millions of dollars in one year? Such a thing has never been heard of, some will say. But if gentlemen will take the trouble to look at the Comptroller's report, page 57, they will discover the amounts that have been paid by taxation out of the general fund for many years for canal purposes, and they will find that in 1858 over a million and a quarter of dollars, in 1859 over a million, in 1860 a million and two hundred thousand dollars nearly, in 1861 nearly a million, in 1862 two millions and eight hundred thousand, in 1863 nearly a million and a half, in 1864 over half a million, in 1865 nearly a million, and in 1866 two millions and a quarter nearly. These amounts were raised by taxation and taken out of the general fund for canal purposes. Some will say that these were probably raised to meet the deficiencies in the sinking fund. Turn to the auditor's account, page 146, and it will give you the exact amounts raised to pay into the canal sinking fund; to wit, in 1859, \$680,000; in 1862, \$1,581,000; in 1863, \$199,000; and in 1866, \$690,000. So that it seems here that the Legislature has not had forbearance enough, in the heavy amounts of taxes that have been raised for the last five or six years, principally connected with the bounty debt, to refrain from taking from the people, by taxation, for canal purposes a sum averaging over a million dollars a year for the years I have stated. Some other gentlemen will say that part of this money must have been taken for enlargement purposes. On page 151 of the second volume, the auditor gives the exact

amount paid for enlargement purposes, which is summed up from 1858 down to 1866, exclusive of the years 1864 and 1866, in which nothing was paid, making a sum total of \$4,800,000. I do not think it is necessary that I should show by a rigorous examination of these tables that in any one year the Legislature has taken a sum exceeding a million of dollars; but I have come so near to it that, for all practical purposes, I think the committee will see the absolute and indispensable necessity of erecting a barrier of this kind. Otherwise we might as well strike out the subsequent section which will prohibit the Legislature from creating a debt exceeding the sum of one million dollars. For my part, I would sooner give them the unlimited power to raise a debt for canal purposes to be paid for by a sinking fund raised by taxation during a period of eighteen years, than to give them the unlimited power of taxation now for canal purposes, and to make the taxes available each year. I think it would be less onerous upon the people, in the postponement of the amount to be paid under the system of raising a debt to make it payable in eighteen years. I hope I have made it sufficiently clear, from this examination of the amount that has been wrung by taxation for the last six or eight years from the people for canal purposes, to show the indispensable necessity of applying at this time this impediment or some other sufficient bar against legislative taxation for canal purposes.

Mr. MURPHY—I am glad the honorable gentleman from Rockland [Mr. Conger] has called my attention to what he considers democratic principles. In former times the democratic party held that it was not the province of the general government to make internal improvements. That was the Jeffersonian and Jacksonian doctrine. It held that internal improvements might be carried on by the States, that it was their particular province to take care of these matters. Else it would have been guilty of the absurdity of opposing all public improvements. I, for one, believe it to be the true principle of this government, divided as it is into federal and State governments. There are two or three propositions on this subject to which I ask the attention of this Convention. In the first place, the provision which we are now combatting and seeking to strike out of this article, will, if adopted, prevent internal improvements by the State entirely; and such is its object. Does any one suppose that you could get a vote of the people of this State to create a tax for the purpose of giving a subsidy to the Susquehanna railroad? Do you suppose that all the considerations which would enter into the question of giving such a subsidy could be got before the people, so that you could get a vote for it? Or, on the other hand, does any one suppose that we could get all the considerations before the people for giving aid to the Champlain railroad, or to any other which might, after full discussion and consideration in a deliberative body, be deemed a proper subject for State aid? I do not think there is any one here that believes they could be. And yet it might be proper to extend such aid, and the people, through their representatives, might so decide. That is the

merit of a republican representative government. It is a most violent presumption to suppose that the representatives of the people here, in these halls, would give their vote for any such proposition, except from a sense of public duty. There can be no venal motives presented for the passage of an act of this kind. Thus, while we cannot obtain a vote directly from the people for a tax, we might do it indirectly from them through their representatives. There is another consideration which I wish to present, that it is for the interest of the State, oftentimes, rather to give aid to public corporations having charge of public improvements than to undertake such improvements themselves. It would be more to the interest of the State to give \$500,000 toward the building of the Susquehanna railroad, than itself to undertake to build that road. In that way we get results which are beneficent to the whole people, without any responsibility beyond the amount we choose to give. And so, in effecting many other public improvements, we would do better by granting subsidies than carrying them on as State works. This is the basis upon which all our donations to charitable institutions have been founded heretofore. You have an orphan asylum established by private charity, which relieves the distress which must otherwise be relieved by the public authorities. Individuals undertake to do it to the extent of their ability, and ask you to aid them. Is it not the part of prudence and economy on the part of the State to give this aid, rather than to undertake the work ourselves or to leave it undone altogether? There is another point I will mention. The gentleman from Rockland [Mr. Conger] has spoken about taxation and debts, and that giving authority to the Legislature to raise a tax is in effect creating a debt. That is the substance of the argument, though he did not use that language. Now, there is a broad distinction betwixt levying a tax and creating a debt. You, or he, or I, or any other representative of the people would hesitate before we would impose a tax upon our constituents. We must see that it was to produce some benefit to them—some remuneration. It might not be for the purpose of an improvement immediately in our neighborhood, but one would look to it that, distant as it might be, the remote effect would be beneficial to our constituents, and that their circumstances would permit it. In creating a debt there is not that feeling of responsibility. A debt is contracted to be paid in the future, and men do not regard it as imposing immediately upon their constituents a burden. They are, therefore, more careless in giving their votes. I repeat the fact that the tax is to be immediate, that the amount is to be paid down, will always be a sufficient restraint upon the Legislature to prevent them from running wildly into taxation. I deny that there has been any excessive taxation for internal improvements for the last few years. Gentlemen must bear in mind that a million dollars is much less than it was before the war commenced. The amounts that have been donated by the Legislature as aids to the different lines in different parts of the State have been very few and limited in amount; and the suggestion, I think, ought not in any manner to excite alarm that the Legislature will

run the State into heavy debt in this way. We may safely leave something to the discretion of the Legislature in this respect, and not to tie up the energies and resources of this great State.

Mr. KERNAN—The debate seems mainly to have turned, for the last hour or two, upon the question whether it is wise and proper to insert in the Constitution a provision prohibiting the Legislature from raising money by direct taxation and giving it to railroad companies to aid them in building their roads. It is argued that the Constitution should not contain a provision forbidding this. I think it should. I have a decided opinion upon that subject. I do not believe it is wise or proper, in the light of the experience of the past, or of what would very certainly be our experience in the future, to leave it within the power of the Legislature to raise money by direct taxation from the people of this State, and donate it to a railroad company. I am unwilling that this Convention should give its sanction to the argument put forth here that it is right or desirable that the Legislature should impose a direct tax upon the property of the whole State and donate it to a private company to build a railroad. I believe this to be both unwise and unjust. In the first place, it is not the proper province of the government of the State to build railroads or to aid by donations of the public funds to corporations to build roads for the benefit of their stockholders, although incidentally they may, to some extent, benefit the State. We go beyond the legitimate sphere of government when we tax the entire people and donate their money to a corporation to build a railroad or for any other private object. Again, does not every man know, in the light of the past, what is the result of allowing the Legislature to be importuned by these companies to aid these projects? I have never said a word in this body about the corruption of legislators. I do not believe it is very profitable to spend time in denouncing others. Let us rather try to act properly ourselves. I do not impute dishonesty to those who have heretofore voted for these donations, or who have resorted to the Legislature to obtain them. What is our experience? Aid is asked from the Legislature for some local railroad project. Standing alone, it has no chance of success. But other parties come from another section of the State with another project which they are anxious to have aided from the State treasury. And from still another section there comes another project, local in its character. Neither of these, acting separately, can induce a majority of the Legislature to impose a tax to give it what it asks. But they form a combination, and members anxious for the local project which is to benefit his particular section, though it is in no sense a State work, votes for and aids to carry through a scheme which gives to each of those the aid desired. This is not a proper principle to act upon in legislation; its results are evil; the temptation to be influenced by it should be cut off, and the provision under consideration does cut it off. If this provision is not retained you will have again, as in the past, "log-rolling," to use an expressive term, which will succeed in obtaining donations for different projects when

neither one of them has merit enough of its own to command, for a moment, the support of a majority of legislators. Strike out this provision, and bills will be passed which will impose burdens upon the people of the entire State to aid local schemes for railroads of questionable utility. Gentlemen have alluded to what has been done in regard to donations to railroads by the State. Though not very familiar with this subject, I think I may assert that our experience is against it. They talk about the three millions given to the Erie railroad. It never helped very much to build that road, as every man in that section knows. It was lost substantially to the company, and entirely to the State. Railroads should rarely be built when there is not such a necessity for them that they will command private capital to build them. The money given by the State is generally squandered and wasted, or at least improvidently used by the men who get up these projects before there is really a demand for them such as to command the private capital necessary to build them. The Erie road was only constructed when private capital was invested in it. I am therefore in favor of restricting the Legislature from imposing a direct tax upon the people of this State in order to raise money to donate to any company to build a railroad, or to carry on any local project. The provision under consideration will not prohibit the Legislature, when there are funds in the treasury, from appropriating the same to such purposes as it may see fit. But let us by the Constitution forbid the Legislature to raise by direct taxation money to be given to railroad companies. I think we should relieve the Legislature from the importunity of local claimants, and require a law imposing a tax in aid of a railroad company to be submitted to the people of the entire State for their approval before it shall be enforced against their property. The gentleman from Kings [Mr. Murphy] stated—it was new to me in theory, but he has had much more experience than I—that because there would be no chance that the tax payers, the people of the State, would sanction such a giving away of their money, therefore the power should be given to the Legislature to do it without consulting them. I am opposed to that. When it comes to the question of raising the donation by a direct tax, I say the people of the State have a right to have the question submitted to them and to be heard upon it. If there is money in the treasury, the provision now under consideration will not prohibit the Legislature from appropriating it as it may deem proper. Gentlemen speak lightly of taxation. Sir, under present circumstances taxation is a serious matter. I am not one of those who have sought to raise a clamor about burdensome taxation; but let us look the fact in the face. This very year you have to raise \$12,000,000 by direct taxes from the people of the State, and this, in part, is required to raise the money donated to the Susquehanna railroad and other railroad companies. When you add to this State tax, the taxes for county, town, city and village purposes, will there not be an amount of taxation that every man must feel is a burden upon the industry of the country, and which

bears heavily upon every class of our tax payers?

Mr. BICKFORD—Will the gentleman allow me to say that I claim that the grant of State aid in any particular section, as an act of justice, is a matter to be judged of by the Legislature. Who are the proper persons to judge of that—the people at large or the persons whom they send to the Legislature to represent them—and who are more capable of judging than the people themselves?

Mr. KERNAN—I answer my friend that should it become a question to be judged of as a matter of justice, whether the people of this State shall be taxed to give to railroad corporations, I will not make the Legislature the court that shall decide that question. But there is no foundation for the claim that as a matter of justice the people of the State should be taxed to give money to aid a private corporation to build a railroad. The theory of this State from the beginning, the theory that has been recognized by the statesmen of all parties in this State, in reference to improvements like the canals, is that they were to be built and improved out of their own revenues anticipated, and that the people of the State were never to be burdened by direct taxation to construct or maintain them. Upon that theory, it is, that we recognize as a debt due from the canals to the treasury of the State the amount raised by taxation and advanced for the enlargement of the canals, and require the same to be repaid into the treasury for the use of the State from the revenues of the canals. That has always been regarded as the sound principle and policy. If my friend from Jefferson [Mr. Bickford] claims that injustice has been done to his section of the State by taxing it for advances to the canals, let him insist that this money thus advanced shall be returned to the treasury for State purposes from the canal revenues, and then it can be appropriated to proper State purposes, in which his constituents have a common interest. But I do not think we should inaugurate a system of general taxation for local objects under the notion of justice. Because money was raised by taxation and used to complete the canals under a constitutional pledge that the amount and interest should be repaid from the canal revenues, we should not tax the people at large to build railroads. Let us stand by the policy that even the canals shall be self-sustaining, and shall not be constructed or maintained by taxation, and that the money advanced by taxation toward their construction shall be returned from their revenues. The most that should be claimed is that this money, when returned, may be appropriated for local objects. But I am utterly opposed to the idea. I did not suppose that any man of either party in this Convention would tolerate the idea of allowing money to be taken from the people of the State by direct taxation and given to the Susquehanna railroad company, or the Whitehall railroad company, or to any other railroad company. I am not in favor of building railroads by the State. When and as they become necessary they will be built by private capital and enterprise. I have no fears upon that subject. The day has long since gone by when this State need be called upon to build railroads that are really

necessary for the accommodation of the business of the country.

Mr. BICKFORD—Will the gentleman allow me to ask him a question? Did not the gentleman vote to restrict counties, towns, and villages of the State from contracting debts for these purposes?

Mr. KERNAN—Certainly.

Mr. BICKFORD—Then how do you justify voting for this prohibition? Where is the consistency of that?

Mr. KERNAN—That vote and my present position are surely consistent.

Mr. BICKFORD—You prohibit the towns, and will not allow the State to aid them.

Mr. KERNAN—Certainly. I would not allow the majority of the people of a town to compel their neighbors to become stockholders in a railroad, or to tax their neighbors to make a donation to it; nor would I allow the majority of the people in the State to levy a tax on all the people of the State to aid a railroad company to construct its road. I do not see the inconsistency; but it would be very inconsistent for me to advocate the contrary. Sir, it is not the appropriate duty of the State government to construct railroads; nor is it the business of the county, or the town, or the city to become railroad stockholders, and to build railroads. These are municipalities vested with certain powers of local government, and I would confine them to that, and would not allow them to be burdened with a debt or to exercise the taxing power to become stockholders in or aid in constructing railroads; I would allow every man who thinks a railroad would be a beneficial project to give his money or mortgage his own farm, if he chooses to do so, to help build it; but I would not authorize him to mortgage his neighbor's farm by a tax for any such purpose.

Mr. BICKFORD—Will the gentleman allow me to ask him a question? What is the distinction, in point of principle, between taxing the people to build a road, and taking money that is in the treasury, which the gentleman says he justifies?

Mr. KERNAN—I said I would restrict by the Constitution the Legislature from imposing a direct tax and donating to a railroad company the money raised. I did not mean to say that I would be in favor of the Legislature donating to a railroad company money which was in the treasury and not appropriated. In answer to the claim of my friend from Jefferson against the provision under consideration, on the score of justice, I said that the most he could urge was that the money which had been advanced by taxation for canal purposes, when repaid to the treasury from the revenues of the canals, should be applicable, in the discretion of the Legislature, to the construction of railroads for the benefit of localities remote from the canals. Sir, the provision under consideration will not be detrimental to the lateral canals. The surplus revenues of the canals, above the amount required for repairs and the sinking fund, will be subject to the power of the Legislature; and a portion of these revenues may annually be appropriated to the completion and improvement of these lateral canals. Gentlemen who have examined the question inform us that the surplus revenues will amount to

three millions a year. I believe that if they are economically managed, and properly taken care of, you will have three millions a year, net revenue from our canals. They must be managed economically, and honestly; and I trust they will be. I trust the developments in the recent investigation have so awakened the public attention, so called attention to the canals and their management, that we shall have in the future more of economy and integrity and thus realize at least a net revenue of three millions, annually. Taking from that \$2,418,000 for the sinking fund and it will leave some \$600,000 a year; which the Legislature may appropriate each year to finish and improve these lateral canals. I think they should do so. I believe, with gentlemen who have argued upon this floor, that the Erie canal, for the present, if kept in good repair, and if efficiently managed, will do a business that will give us a net income of three millions a year, giving us six or seven hundred thousand dollars every year from the revenues of the canals to aid in carrying out to completion the construction and improvement of these lateral canals.

Mr. BICKFORD—Will the gentlemen allow me to ask him a question?

Mr. KERNAN—Yes, sir.

Mr. BICKFORD—The gentleman alluded to a sort of corruption called "log-rolling," which he supposes might take place if these various lines were allowed to come up to the Legislature for aid. Is not there ten times the chance for corruption and log-rolling with regard to money in the treasury, as when a tax is to be laid?

Mr. KERNAN—Certainly; I think there is always danger when you have a full treasury that it will be squandered or imprudently appropriated. But because they may squander all the money there is in the treasury, I will not for that reason give them power to raise more money by taxation. I admit it is desirable that there should not be any improvident appropriations of the public moneys; and I trust that when the friends of the lateral canals, or the friends of local improvements come to the Legislature and ask them to appropriate to their aid moneys, in the treasury, there will be watchfulness on the part of the people to see that there is economy and care in spending it. The gentleman says that I suppose there have been combinations in the Legislature. I know that there have been combinations. Did I not see in this hall, when the project for giving half a million to the Susquehanna railroad company was up, in 1861, the friends of that project appealed to and compelled to aid in passing bills to donate \$50,000 to this local purpose and \$50,000 to that local object, to projects of a private and local character all over the State resulting in a combination which secured to them all a large vote which came near to opening the treasury to all these schemes, although neither of them alone could have secured many votes? Yet these members who thus combined were not corrupt men; but each was anxious for the success of the application for aid from his own locality, and it led to a combination of votes almost sufficient to carry the whole, when neither would stand alone or could have received anything like

one-third the vote they all got together. It is wise to prevent this so far as we can do so by constitutional provision. The proposition under consideration will tend to confine the Legislature to its legitimate functions as a part of the State government. It will prevent the Legislature from being besieged and besought from the beginning of the session to the end for aid to this locality and to that—for aid to projects which every man knows are of no considerable if of any value to the mass of the people of the State.

Here the gavel fell, the gentleman's time having expired.

The question was put on the amendment offered by Mr. Hale, to insert after the word "improvement," in the ninth line, the words "belonging to the State," and it was declared lost, on a division, by a votes of 17 ayes; the noes not being counted.

The question recurred on the motion of Mr. Alvord to strike out the eighth section.

Mr. S. TOWNSEND moved to strike out section 8 and insert in lieu thereof the following:

"Taxation for general State purposes shall be apportioned among the several counties in the ratio of the number of their inhabitants."

Mr. S. TOWNSEND—This is a principle which might, perhaps, as well be introduced in some other portion of the article; but, judging from the action of the Committee of the Whole that this article is nearly perfected, and as we have discussed very extensively some of the circumstances connected with taxation—

Mr. RATHBUN—I rise to a question of order. My objection is that that amendment is not germane to the section under consideration. It is very proper, but not in that connection.

The CHAIRMAN—The Chair thinks the point of order is well taken.

Mr. RATHBUN—I offer the following amendment as a substitute for section 8:

"Sec. 8. No tax shall hereafter be imposed upon the people of this State for works of internal improvement or their debts, unless authorized by a vote of the people according to section 14 of this article, except to provide for the payment of the debts specified in section 1."

Mr. S. TOWNSEND—I rise to a question of order. Does the Chair entertain this as a substitute for the section, when it is no more in order than mine was?

The CHAIRMAN—No point of order has been raised.

Mr. S. TOWNSEND—I raise the point now, under the decision of the Chair; for although I think my amendment was in order, yet the decision of the Chair having been that it was not in order I think the amendment offered by the gentleman from Cayuga [Mr. Rathbun] should be ruled out under the ruling of the Chair in my own case.

The CHAIRMAN—Not upon that ground. The Chair entertains the amendment of the gentleman from Cayuga.

Mr. S. TOWNSEND—I do not see the difference; but I will not press an appeal from the decision of the Chair.

Mr. CHURCH—I had proposed to say that the fourth section, which the committee has adopted supersedes to such an extent the necessity of the

first part of this section, that I am entirely willing, and I think it would, perhaps, be better to strike out the first part of the section. This amendment offered as a substitute for the section is the same, if I understand it, with the latter part of the section reported by the committee.

Mr. RATHBUN—The same, exactly.

Mr. CHURCH—I shall, therefore, vote in favor of the amendment offered by the gentleman from Cayuga [Mr. Rathbun]. I do not propose to occupy any time upon this amendment, but I regard it as the most important provision contained in the report of the Finance Committee. Some gentlemen have inquired whether, in case of some great disaster or casualty to all the canals, this prevents the expenditure of money sufficient to put them in repair. I answer unhesitatingly that it does not. If the canals were swept out of existence by a flood, or a volcano, or a public enemy, they could be repaired from the revenues of the canals, in preference to anything else; so that there is no necessity whatever for raising money by tax to keep the canals in repair.

Mr. LEE—Will the gentleman allow me to ask him a question? If a lock, or a dam, by which slack water navigation is maintained, was swept away, would that be regarded as an ordinary repair?

Mr. CHURCH—Certainly.

Mr. LEE—Is that so construed?

Mr. CHURCH—Certainly, and always has been by the State. The flood of March 17th, 1866, swept away almost the whole of the Genesee Valley canal aqueducts—

Mr. LEE—I was under the impression that those repairs came under the head of extraordinary repairs.

Mr. CHURCH—No, sir; under the head of ordinary repairs; and that is the policy of all the reports that have been presented to the Convention, as well as the policy of the present Constitution, to leave the amount to be expended for ordinary repairs entirely without any restriction. It is unlimited. You can take the whole revenue of the canals, if necessary, for the purpose of keeping them in repair. So that it is not at all necessary to strike out this section for any purposes connected with the canals. We have provided in the article already, in the first place, a surplus which gentlemen claim will amount to \$600,000 a year. In the second place, the whole surplus revenues of the canals, after the debts are paid, are to be put into the treasury to be appropriated to the canals if the people, through the Legislature, desire so to appropriate them. From that time the whole revenues of the canals may be used for purposes of improvement. It is not, therefore, necessary, for any purpose connected with the canals, that this power of taxation should be continued. I think it is not absolutely correct to say that it was an oversight in the Convention of 1846 to omit this section. It was never dreamed in 1846, when the Constitutional Convention assembled here, that any Legislature would dare to impose a direct tax upon the people of this State for the purpose of donating money to private railroad corporations, or for works of internal improvement, even, unless it be-

came necessary for the purpose of preserving the public faith. And the Legislature did not exercise that power until the year 1854. Then they commenced to exercise this power, and continued from that day down to this, increasing almost every year, until we now have the direct tax stated by the gentleman from Oneida [Mr. Kernan] of \$12,000,000 imposed by the State. We all recollect when we regarded a mill tax as a large direct tax for this State to impose upon the people. That would produce a tax of about \$1,500,000; but we go up this year to about \$8,000,000, making an aggregate tax of \$12,800,000 upon the industry and labor of the people of this State. Where are we to stop? We have begun to appropriate to a railroad south and a railroad north; and does anybody suppose that the claimants will not increase as time rolls on? Next year, instead of two, we shall have six railroads applying for money; the next year twelve, and the next year twenty; there is no end to it. It goes on increasing, and taxation increases as the number of applicants increases. They combine their strength in the Legislature, and they impose a tax, and it comes upon the people as certain as death. There is no possible escape from it—no evasion. It is imposed by the Legislature, collected by the tax-gatherers, and the people must submit to it. I do not believe in the principle of taxing the people of a State or of a government for purposes of internal improvements, whether it be for canals, railroads, or anything else. The only legitimate power for any government is to afford protection to life, liberty and property. My friend from Jefferson [Mr. Bickford] tells us he desires a beneficent government. Sir, Russia is a beneficent government; Austria is a beneficent government. The worst despotism that ever existed on the earth is a beneficent government, within the meaning of the gentleman's "beneficence." Louis Napoleon has a beneficent government. I believe that the government that interferes the least with the people is the beneficent government which confers the greatest blessings upon the mass of the community. It is the government that lets the people alone, that protects their lives and property and leaves them to pursue their business in their own way, which is the best government in the world. If they desire to build railroads let them build them. It is no part of the business of the government to do it. It is not the business of the government of the State, of the county, or of the town—it is the business of the individual.

Mr. BICKFORD—Does the gentleman propose to be a disciple of Jefferson and the democracy of Virginia when first starting, when they laid down the principle that the government is best which best promotes the prosperity and happiness of the people?

Mr. CHURCH—The principle of Jefferson and of every statesman that we delight to honor in America is, that the government is best which interferes the least with the business of the people.

Mr. BICKFORD—No, sir; not so.

Mr. CHURCH—Yes, sir. I agree with a political writer whom I regard as the most eminent of the political writers of the present age, who, in

discussing the benefits and evils of different forms of government, declares that a republican government is by far superior to every other form, when it keeps within the legitimate purposes of a government; but when it steps outside of those purposes, when it undertakes to do business beyond the legitimate power of the government, to wit: protection, then it is the poorest government in the world. Do we not all know that a despotism can carry on outside business far better than a republican government—that the change of officers we have, the scattered and divided responsibility which we have in a republican government, is not suited to carrying on private business, or any business outside of the legitimate powers of the government? I do not believe in a beneficent government, in the sense in which my friend from Jefferson [Mr. Bickford] used that term. The people ask no beneficence from the government. They ask no other aid from the government than to keep good order in society, and to give protection to their lives, their liberty, and their property. Then they are able and willing to take care of themselves and carry on their business and pursue happiness in their own way.

Mr. ALVORD—I wish to answer, in a very few words, some of the positions taken by the gentleman from Orleans. [Mr. Church]. I am entirely gratified myself that he has come out to-night in his true colors. I will ask that gentleman, and I will ask every member of this committee, if the position now taken by the gentleman from Orleans with so much emphasis, had been the position taken by the State in 1817, where to-day would have been the State of New York? Where would it have been to-day with no Erie canal, no Champlain canal, no Oswego canal—the works that stand at the foundation of the wealth and prosperity of the people of the State of New York to-day? I will ask my friend another thing. There is stretching rapidly across from one portion of this country to the other, reaching from the Atlantic to the Pacific, an iron band which will bring the far-off portions of this country together. If the United States government had not stepped in and given aid and comfort to that enterprise when would it have been built? For long ages yet to come would it have been built by the enterprise of private individuals and private capital? Agreeing to a certain extent with the gentleman from Orleans, I cannot go with him on this question and I doubt whether any other gentleman can within the State of New York, impressed as I am and as I think they all are, with the great benefits and advantages to the people of this State from her works of internal improvement. There has been a great deal of eloquence wasted upon this amendment upon the part of gentlemen opposed and in favor of the proposition which might have been better devoted to the eleventh section. I hold that the gentleman from Orleans, in the drafting of this eighth article, meant only the canals and internal improvements of the State which belong to the State; because, if gentlemen will look at the eleventh section in this very same article, they will find the provision, "Neither the credit, nor the money, or property of the State shall be in any manner given or loaned to

aid any individual, association or corporation." That is complete and entire in itself; and it takes this whole question of aid to railroads out of this question which is now before this committee. The question before us is simply with regard to the canals, and not in regard to aiding outside enterprises, either by loans or direct gifts of money from the treasury. I will say in answer to my friend from Oneida [Mr. Kernan], who says he is entirely willing that this money, which shall go into the treasury and shall not be derived from taxation, may be given to these works, that if he follows up this very article to the eleventh section, in order to carry out his policy he must go against that; because it not only forbids a tax, but forbids appropriations to any such purpose under heaven. Sufficient unto the day is the evil thereof. When we shall come to the eleventh section it will be time enough to talk about giving the State aid to railroads. The gentleman from Orleans [Mr. Church] undertakes to tell the Committee that we have done for the canals all that will be, under any circumstances, necessary; that we have created a general fund in behalf of the canal policy of the State, and that we are to have \$600,000 surplus every year in coming years, and that is to be sufficient to do all this work. We have now pressing upon us, as I have had occasion to say before, the Chenango canal extension, which will absorb \$800,000; the Champlain canal improvement, which will use some \$300,000 more. And we know the necessity of removing the wall-benches of the Erie canal, and bringing in water sufficient to work the canal, which will cost two millions, if you do not improve the canal at all now. Put these together and what is the result? That we shall have to go along eight or ten years slipshod, before the canals can be completed. It may be that the Legislature, as in the last Legislature, may not see fit to go on with the extension of the Chenango canal, then that is out of the way. They will still have to vote another tax, because the appropriation of all the surplus revenues in the treasury of the State will not be sufficient to do the work upon the Erie and the Champlain canals, or upon either of them to the exclusion of the other. Leave in here permission on the part of the Legislature of the State to pass a law which fixes a certain improvement upon the canals of the State, to be done by tax to be raised within the year in which they pass the law, and then there is a reciprocal responsibility between the Legislature and the people, and I think in that form we may trust them with the administration of that power. Another thing. It may be that we may have a recurrence of a flood like the flood of 1865. It may sweep our entire canals out of existence. The gentleman says, it is true, that the revenues of the canal can be applied for the purpose of reinstating them, and no power on the part of the public creditor to make objection to it; because that is so in the Constitution. Granted. Suppose that they are destroyed so as to require five millions to repair them. What will you do then? Your canals are to remain quiet, and still until your Legislature shall pass a law and submit it to the people, and let the people vote upon it, to decide whether

or no there shall be a tax for the purpose of making up the balance. Your revenues are entirely gone, and your canals are destroyed to the extent of two, three, or four millions of dollars. Under the provisions of this section, you have got to wait for the action of the Legislature, and of the people, in order to get money enough to pay your expenses.

Mr. HARDENBURGH—In the event that the canal is entirely swept away, I refer to the next section, which allows a million dollars to be expended in such an emergency; and they can go to work, and then they have power to raise fifty millions. The twelfth section provides:

"The State may, to meet casual deficits or failures in revenues, or for unexpected expenses not provided for, temporarily contract debts; but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed one million of dollars, and the moneys arising from the loans creating such debts, shall be applied to the purposes for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever."

The State may contract debts to the amount of a million, which is about as much as they would want to spend that year, and in the mean time they can pass the law and send it to the people for whatever may be required to reconstruct the canal.

Mr. ALVORD—That may be or may not be true, that that is all that is necessary. I suppose if the Erie canal from one end to the other were destroyed or rendered entirely insufficient for navigation throughout the entire length of it, requiring one to five millions of dollars, the necessities of commerce and the interests of the State would demand that that should be repaired at the earliest possible moment; and it may be that in any such event a million of dollars would not be sufficient. But to let that alone, all there is in regard to this matter is simply to give the people of this State, as from time to time they shall be represented in the Legislature, the right to levy a tax, to be paid by the people for the benefit of any work of internal improvement. I trust that we are now wiser in that regard than gentlemen in the Constitutional Convention of 1846. I undertake to say that it is susceptible of proof, and has been proved upon the floor of this Convention, that the settlement of the Constitution of 1846, was a fraud upon the interests of the canals at that time. But a man who wielded power at that time, and who, above all others, wielded power on this very floor in 1844, stood up here in his place and in answer to a question I put to him, said, "Sir, I will tell the gentleman from Onondaga, and I will tell this assembly, that if the case was put to me I would vote to lay a tax of millions of dollars on the people of this State to shovel the berms and tow-path into the canal and fill them up before I would give them one dollar for the purpose of improvement."

Mr. BARTO—Did you vote for the Constitution of 1846.

Mr. ALVORD—I did not, thank God. I voted against it; and I voted against it under the lead of the gentleman from Herkimer standing up in

his place and stating unequivocally that so far as regarded the works of internal improvement in this State, he would shovel the dirt into them at the expense of millions of debt, rather than to take out one shovelfull of earth from them.

Mr. S. TOWNSEND—Whatever the gentleman from Herkimer, Mr. Michael Hoffman, may have said in the Legislature of 1844, and I have no doubt the gentleman from Onondaga correctly relates what he understood him to say—

Mr. ALVORD—Not what I understood him to say, but what I know that he said.

Mr. S. TOWNSEND—We generally know, sir, what we understand; I will say, sir, in justice to the memory of that great man—

Mr. ALVORD—I did not give way for the purpose of a eulogy. If the gentleman has a question to ask I will hear it.

Mr. S. TOWNSEND—Well, I will ask a question. Did you not know or understand that if the course advocated by Michael Hoffman had been pursued, the Erie canal would have been more benefited than under the policy which he willingly yielded to?

Mr. ALVORD—I have this opinion and only this, that if the gentleman from Herkimer had kept his hands off the canal in 1842 it would have been finished in ten years.

Mr. S. TOWNSEND—1842 or 1846?

Mr. ALVORD—We were talking of 1846.

Mr. S. TOWNSEND—Now, sir, I know the fact, that if the policy of Mr. Hoffman had been adhered to solely it would have been more for the benefit of the Erie canal enlargement.

Mr. ALVORD—I leave that matter to the better judgment of gentlemen who have looked over and examined it. I believe that the intention was all in good faith on the part of the gentleman whom I have mentioned, and good faith on the part of those who followed him, through the mistaken notion that it was the best for the people of the State. That was a mistaken notion. It never should have been done. On the contrary, we should have been permitted to go on with the work of internal improvement, the enlargement of the Erie canal as originally contemplated by the law of 1836, and should have finished it; and after getting over the financial difficulty of 1842, by 1848 or 1850, we should have had the canal complete. What is the result of this provision? To-day the Erie canal, under the provisions of the Constitution of 1846, is yet unfinished. It never was finished at all. This portion of the canal is narrower than the western portion; so that the part where the entire business of the canal is received is narrower than the western portion of the canal to-day. And now we are asking that the debts of the canal should be paid, and that the work should be done with the surplus revenues, with which it is impossible, within a short length of time, to complete that work. In the mean time, if this provision of the Constitution is agreed to by this committee, and by this Convention, the result is that the work which is already commenced upon your Chenango and Champlain canals, and which may be necessary upon the Genesee Valley canal, must remain forever undone. I am willing that it shall remain forever, undone if the Legislature, in their wisdom,

coming up from the people, shall say so. But if, on the contrary, they say by their votes that the people are willing to have impressed upon them a tax for the purpose of completing these improvements, I say we should not tie them up so that they cannot do it.

Mr. RATHBUN—The gentleman from Onondaga [Mr. Alvord] is not unwilling that the Legislature should be restricted in the formation of State debts. He is entirely willing that the power to run the State in debt shall be taken away. But he is very unwilling that the power to tax the people and spend the money should be taken away. And the gentleman from Jefferson [Mr. Bickford] complained of the wrong and injustice that this Convention was about to do the people; and he has given us some recollections of what David and Solomon did on works of internal improvement. [Laughter.] He seems to look upon taxation, for the purposes of internal improvements in the State, which we propose to take out of the hands of the Legislature of the State, as a great luxury of which we wish to deprive the people. He stands up here in the face of the people, and speaks of their being bound hand and foot; and why? Because we take from the Legislature the power to tax the people to an unlimited extent for internal improvements. I do not know but the people will groan when they find themselves in these bonds, and learn that the Convention has been wise enough, prudent enough, and discreet enough, to say that the power to contract debt is no more dangerous than the power to tax for the same purpose. I am yet to learn that there is any great danger in contracting debts, more than in placing in the hands of the Legislature unlimited power to tax the people and to expend this money to be derived from taxation upon works of internal improvement if they see fit. If we adopt this little proposition which is now before the committee, and what may the Legislature do next January? They may lay a tax of ten millions of dollars on the people, to commence the enlargement of the Erie canal; and who can stop it? Now there is no denying that if you omit to insert this clause in the Constitution, the power to lay a tax sufficient to enlarge the whole Erie canal during the next session is in the hands of the Legislature. They contract no debt, but they levy on the people a tax of twenty millions and apply it to the enlargement of the canals. Where is the power to arrest that? It is not to be found. Yet we are told that it is a limitation and control of the Legislature and that we have no confidence in the Legislature. Well, I have no confidence in any body of men sufficient to give them the power to tax the people to the amount of fifteen or twenty millions for any purpose whatever. The power is to be left to the people, and they can authorize a tax of any amount they think it necessary to enlarge the canals.

Mr. BICKFORD—When did it first occur to the gentleman from Cayuga [Mr. Rathbun] and to others who are so eager to protect the people against taxation, that it was necessary to put in the Constitution a restriction upon the power of the Legislature to tax the people?

Mr. CHURCH—We have seen it abused.

Mr. BICKFORD—It was not in the Constitution of 1846, and nobody thought of putting it there. When did it first occur to the gentleman I would like to know?

Mr. RATHBUN—It has occurred to me ever since the power to tax has been exercised for the enlargement, and ever since that power has been used for the benefit of local and private corporations.

Mr. BICKFORD—When were the people taxed for the Erie enlargement without their express consent previously given?

Mr. RATHBUN—Now, if the gentleman will get through and sit down I will answer him. In 1842 the State was involved in debt to such an amount that it was thought utterly impossible to go along, and the "stop and pay" policy was inaugurated, which, as the gentleman says, cost millions upon millions of dollars. The question was whether the people of the State of New York would bear taxation to pay the debts contracted. I recollect very well being in Albany when that question was under consideration. The question was often put to me, "Will the people bear taxation to pay these debts?" The answer was, "Is it necessary?" "Why, yes; we cannot go a step without it; we can do nothing without it." Then, instead of inquiring whether the people would bear it, you should inquire what the people would do if the Legislature should fail to levy a tax to pay the debt. If it is necessary and proper and right it should be done, then you have no right to do anything but levy a tax to pay the debt. Now, I desire above all things that the people should be guarded on the one hand against debt, and on the other hand against taxation for the carrying on of internal improvements without their consent. That is what I am at, and I will state why. The gentleman from Onondaga [Mr. Alvord] has furnished me an argument on that very subject. "Suppose," he says, "these canals are blown up, or rather, hove up by a volcano,"—it would be rather a long one, but there might be such a one, perhaps; the power that creates volcanoes might make one three hundred and sixty miles long. [Laughter.]

Mr. ALVORD—The gentleman is mistaken; it was the gentleman from Orleans [Mr. Church] who said the canals might be blown up by a volcano.

Mr. RATHBUN—I thought it was the gentleman from Onondaga [Mr. Alvord]; and that he said it would cost five or ten millions to repair it; or a flood might come and carry it all away—a flood will answer my purpose—then how would you repair it? I will tell you how it would be repaired. There is nothing in the section that prohibits the raising of moneys for repairs. Repairing is not enlargement; it is the repairing of work which the State owns. There is no provision against the levying of taxes to repair the canals. But, sir, says the gentleman, it may all run away and take five millions of dollars to replace it. Well, sir, Massachusetts may hitch on to the canal, for all we know, and drag it off into Massachusetts; and then we would have to build a new canal. Under such suppositions what may not happen? As an argument for keeping out this clause prohibiting the Legislature from levy-

ing taxes to go on with a new and enlarged scheme of improvement that will not answer; it is not sound. I trust this Convention is not to be drawn aside from its course by any of those extravagant suppositions. They are unreasonable. They can never arise, probably, in the world's existence. The Legislature has power to repair the property of the State without drawing upon the funds arising from the revenues from that property. They can draw upon the money of the people for the purpose of repairs; they are not prevented by the clause under consideration. Upon these grounds I will uphold this section, putting it where it will guard the people against the commencement of this scheme of internal improvements without their consent. All I ask is that whenever the grand scheme is commenced, which is to enlarge the Erie canal, and furnish more glory to those who think it their glory, it shall be done with the consent of the people.

Mr. HALE—I do not agree with the gentleman from Oneondaga [Mr. Alvord] that this section as it now reads, has nothing to do with any improvements except the canals. I did hope that the friends of this section would consent to the amendment which I suggested, which would have separated the question in regard to the canals from the question as applied to other works of internal improvement. I offered the amendment for that purpose and for no other, knowing that the alleged evil which it was sought to prohibit was provided for, fully by the eleventh section, and that it was a work of supererogation,—that it was merely prohibiting the Legislature twice in the Constitution instead of once. I offered that amendment in the hope that the separation might be made, and the question of State aid to other than public works be postponed until the consideration of section 11. But as it is, that question arises of necessity here. This section reads "no tax shall hereafter be imposed upon the people of the State for works of internal improvement or their debts." The language I admit is somewhat ambiguous. Precisely what is meant by the phrase "or their debts," I think is not very apparent upon the face of the section. I suppose, however, the intention of the committee is to prohibit in this section the imposing of any taxes for the construction or improvement of any works, or for any debts contracted in such constructions and improvements. Now, Mr. Chairman, it is obvious I think, that this does apply to other than canals. It applies to railroads; it applies to all works of internal improvement, whether owned by the State or not, and the effect of it is not only to prohibit the imposition of taxes to enlarge the canals, but also to prohibit the imposition of taxes to aid the construction of a railroad in any part of the State. It seems to me this Convention would do well to pause and consider, before it adopts, to the full extent, the theory upon which the Finance Committee have gone in the preparation of this article. In their anxiety to repress, so far as they properly can, the improper expenditure of the people's money, I must say I think this committee have gone too far. They have not only restricted the Legislature, but they have imposed an absolute prohibition. The section under consideration, taken in

connection with the eleventh section, is an absolute prohibition of any action by the Legislature imposing a tax upon the people, or taking money from the treasury for any works of internal improvement, "except as is otherwise provided in this article." It not only prohibits the use of the public money for works of internal improvement, but it also prohibits charities and gifts of every kind by the State. I do not propose to argue this question; I simply wish to call the attention of the committee to the fact that they cannot adopt this section without fully indorsing that policy. I am ready to admit that evils may have arisen in some instances by the injudicious appropriation of money for such purposes, although I do not know to what extent they have existed. On the other hand, if a case can be imagined in which the interests of the people of the State would be furthered by State aid being extended to works of internal improvement, then this section should not be adopted, because it is a section of absolute prohibition, and not a section merely of restriction. It is time that a submission to the people is provided for; but if you examine section 14 you will see that a submission to the people is so hedged with conditions and qualifications as to make it almost impossible that such a submission, even although the people were in favor of the particular measures, could be practically useful. You will find in looking at that section, among other provisions that "no such law shall be submitted to be voted on within three months after its passage, or at any general election where any other law, or any bill, or any amendment to the Constitution shall be submitted to be voted for or against." The result is that no appropriation of this kind can be made, no tax can be imposed for more than one object at the same election, which, in the ordinary course of things, is in the same year, unless you multiply special elections. Now, can this Convention say there will be no emergency in which it will be proper for the Legislature to impose taxes upon the people, and appropriate money for the works of internal improvement when it will be practically impossible to make a submission of this kind? It seems to me, with great deference to the Finance Committee, that they have gone altogether too far; they have so tied up the Legislature as to make their action a check—an effectual check, upon works of internal improvement, if this Constitution should be adopted. It strikes me the tendency of this Convention is to go too far in that direction. We have already adopted a provision prohibiting towns or communities from taxing themselves for the purposes of internal improvement; and if we prohibit the State from giving aid, sections of the State which have not been favored in this respect will be entirely shut out for a century to come, perhaps, from the privileges and facilities for communication which other parts of the State enjoy. I trust we shall not, in our zeal for economy, prove ourselves to be the enemies of progress; that we shall not, by our action, check the march of improvement by obstructing the building of railroads or the extension of means of communication to the communities which are now without them.

Mr. S. TOWNSEND—I rise mainly to conclude what I was saying when interrupted by the gentleman from Onondaga [Mr. Alvord]. It is this: The evidence was in the possession of the Convention, if they chose to look at the reports of the Committee on Finances, as to the course of Mr. Hoffman in 1846. Had that policy been pursued it would have been much better for the finances of the State. But the "log-rolling" principle was so strong that Mr. Hoffman and other gentlemen were compelled to modify their plan. Knowing that fact, I went to him myself, and asked whether it would not be better for him to say that he would yield his first preference to an evident wish of a majority of the Convention, produced by a coalition of the lateral canal interest in that body. He preferred somebody else to do it. So, eventually the plan of the immediate enlargement of all the canals was adopted; the consequence was a much larger debt on the State, and a prostration of the enlargement of the Erie canal. So much for that point. As to what is called the policy of 1842, it may be within the knowledge of some gentlemen that I was permitted to be personally familiar with the operations of that period. I happened then, and had been for some years before, a representative from the city of New York. If gentlemen will refer to the files of this House, they will find that when the first idea of what has finally become the policy of 1842 was broached on this floor, it was only sustained by the votes of the New York delegation, thirteen in number. I will tell gentlemen the inside fact that Michael Hoffman (the "Admiral," as we familiarly called him) despaired of success. He alluded to the fact that an incidental motion of mine had received but nineteen votes in the early days of the session of 1842, to show that it could never be adopted. Then the State of Pennsylvania allowed her credit to fall to the extent of 50 per cent by not paying the interest on her debt, and the bonds of our State issued for the Erie railroad were being hawked in small sums about the city of New York at twenty-five to thirty per cent discount, and if offered largely they would have gone down to fifty per cent. Under the imperious circumstances of the case, the very men who ridiculed such ideas in 1841, and who were willing, before the close of the session of 1842, to resort to extreme remedies, came to us and said, "Go on with your measure, and if you have not votes enough we are with you." I will go a little further. Some who enjoyed the privilege and honor of being an intimate associate with that gentleman, desired him to go further than the mill tax to which the gentleman from Onondaga has alluded, and wanted him to ingraft a two mill tax at that time in order that the public works should not be stopped. His answer was, "I cannot get a two mill tax, such is the timidity of the people, or rather their representatives, as to taxation." He did not know that in future years we would be taxed to the extent of seven to ten mills on the dollar. So much for the inside history of those exciting and trying days of our State finances. It was my privilege always to enjoy that gentleman's friendship, although differing with him on the "stop" policy, and at times on other questions.

He firmly resisted my appeal, in this instance, upon the ground that it was impossible to go further, from the small vote that the one mill tax received. I have said all I intended, to vindicate that gentleman's policy and memory. The point I intended to urge here is that had his policy been pursued, had we not been driven by "log-rolling," even in the Convention of 1846, to adopt the compromise course, the canals would have been in better condition than they are to-day. In reference to the section which is immediately in issue, I will say I am not afraid the people will tax themselves too much. The Convention of 1846 departed not from their usual cautiousness when they left that section as it is. When the proposition comes up, I will assist in striking out the section now proposed.

Mr. PRINDLE—It was not my intention to have said anything on this subject, but the debate has taken so wide a range that I desire to reply to a few of the arguments that have been made by those in favor of retaining this section. It seems to me that certain gentlemen in this Convention vote and speak continually upon the assumption that the people, year after year, are to elect thieves and robbers to the Legislature, who are to plunder them, and that, therefore, no power can safely be lodged in their hands. It seems to me if we are compelled to act upon this assumption, the Convention might as well adjourn and go home, because we must depend upon the Legislature. We must depend upon the representatives who are elected by the people. That is the fundamental idea of republican government. This committee have thought it necessary to introduce a provision, I believe unknown to any State Constitution in the United States. I have looked over the Constitutions of the different States, have glanced over them all, and I find in no one of them any such restriction as it is proposed to insert in our Constitution. I read, scattered all over the Constitutions of States, language like this: "Internal improvements shall be encouraged by the government of this State, and it shall be the duty of the General Assembly to make provision by law for ascertaining proper objects of improvement, in relation to the railroads, canals and navigable waters, etc." I find that other Constitutions have language of that character. The people of other States regard it as the business of their government to encourage internal improvements and not to discourage them. It will be for the State of New York alone—the Empire State—to lay its hand upon the work of internal improvement, and diminish the power and the glory of the State. If I understood the remarks of the gentleman from Cayuga [Mr. Rathbun] correctly, he is not even willing to trust the people to vote taxes upon themselves. I understand the gentleman (perhaps he did not mean all he said) to say that he was not willing to leave it to any body of men to tax the State.

Mr. RATHBUN—The people are the State.

Mr. PRINDLE—I believe, to carry out the ideas of these gentlemen, they should go a step further. They should say that the people should have no power to levy taxes for internal improvements, because if they are so regardless of their

own interests, if they will be guilty of such acts of consummate folly, as the gentlemen seem to suppose they may, they cannot even protect themselves; they will prey upon their own interests, if they do not know enough to elect representatives who will not plunder them. I think it may be fairly inferred that they will not know enough to refrain from plundering themselves. It does seem to me that the arguments of gentlemen have a tendency to the distrust of republican institutions. The argument goes to the length of saying that the people will not elect representatives who will not betray their interests and rob and plunder them. The argument is that the law-making power must be taken from the Legislature and conferred upon the people themselves. It seems to me when representatives are elected for their wisdom and for their integrity by the people, they are better prepared when they come to this Capitol to say whether taxes should be levied for works of internal improvement than are the people themselves. The people may be misled by demagogues; they may be scared by the cry of taxation, which is often raised by demagogues; they may be thus frightened from the business which they should accomplish. The Legislature come here, they appoint committees, they consider the question of internal improvements, and they are more competent to act upon this question than the people at large, who act frequently without consideration and without much reflection, and have not the proper means of obtaining information which the representatives of the people possess. What is the legitimate result of the argument of the gentleman from Orleans [Mr. Church]? He believes in having a government do the least that is possible. Why does he not propose to sell the Erie canal and the other canals of the State? What business, according to his argument, has this State to undertake to carry on the canal system? Why not abandon the charities of the State and allow them to be taken care of by private enterprise? Why not shut up the public school-houses of this State and say to the children who assemble there, you must provide the means of your own education? Why not take away the fund from academies and colleges of this State? I say the argument of the gentleman from Orleans [Mr. Church] necessarily carries him to this result. I do not know but in theory the gentleman may be correct. Possibly he may be, but it is too late in the day to bring up that question. We have engaged in these enterprises, and now the question is, shall we allow our public works to languish and die upon our hands or shall we carry them through in a business-like manner? I say it would be much better for us to sell the canals, much better for us to abandon this business and leave it to private enterprise where it can be properly carried on, than to say that although we are engaged in these enterprises we will not do all which is necessary properly to carry them on. There was another argument which the gentleman from Orleans used, that is that we are to have \$600,000 of surplus from the canal revenues to devote to works of internal improvement for the care of the canals. I turn to a report of the gentleman who makes this

argument, and see that the surplus revenues of the canals will be \$2,418,000, the exact amount which is appropriated by the previous section. Where, I ask the gentleman from Orleans, will be the money, according to his own figures, to take care of the canals? Where will be the surplus revenues of the canals to finish the Chenango canal extension? It will not do to blow hot and cold in the same breath—at one time to tell us there is to be \$600,000 a year which will not be used, and at another time in an official report to say there will be absolutely nothing, not one cent. In view of this fact, I ask the gentlemen of this Convention, and appeal to their good sense to say whether they will allow works of internal improvement already commenced, already engaged in, like the Chenango canal extension, to die upon our hands. This work is in all stages of construction. A rain of extraordinary duration or a freshet will wash it away. If we do not go on and comply with our contracts we shall have as much or more to pay for damages to the contractors than it will cost to complete the work. I ask if gentlemen of this Convention will consent to allow that work to be destroyed, and leave it in its present shape? Is it business-like? Is it statesman-like? We had better sell the Chenango canal, we had better give it away and allow somebody to take it and finish it, if the State refuses to do its duty. I cannot understand how it is to be completed if this section is adopted; I cannot understand where the money is to come from according to the figures in the report of the gentleman from Orleans. It seems to me that the arguments of the gentlemen are a little inconsistent when they are so much afraid to allow the Legislature to impose taxes upon the people. According to the arguments of the gentleman from Orleans [Mr. Church] he is willing to leave these \$600,000 a year in the hands of the Legislature, to be disposed of as they see fit. More than that, he is willing to leave the whole surplus revenues of the canals to be used by the Legislature as they may think proper after the debts are paid. When this money is in the treasury it will be a very easy matter for the Legislature to appropriate it, if they desire, to wrong purposes, to purposes that will be injurious to the interests of the State. But when the question of taxation is raised, the Legislature will be careful of its action. I think it would be far safer to allow the Legislature to impose taxes upon the people of the State than to allow them to use in their discretion the money that has already accumulated in the State treasury. Is it not just as important to the interests of the people of this State that the money which is already accumulated should not be squandered, as it is that the people should not be taxed? If the Legislature use the \$600,000 it is only \$600,000. If they levy a tax upon the people of \$600,000 it is still only \$600,000. Both belong to the people of the State. It is no more injurious to use the one than it is the other. The question is not, as I understand, whether the Legislature shall appropriate money hereafter for the purpose of constructing railroads, but it is a question as to whether the Legislature shall not have the power of making such internal improvements as the

necessities of, this great State may appear to demand. If we are to have such a Constitutional provision, as this, if this spirit of parsimony is to prevail in this Convention and the Constitution framed shall finally be adopted by the people, farwell to the greatness and the glory of the State of New York. We shall begin to retrograde, and sister States who have more beneficent governments, whose statesmen have more enlarged views, will take the lead and leave us far behind.

Mr. CONGER—Will the gentleman allow me to ask him where he obtained the quotation in regard to the State making internal improvements? In what Constitution did he find it?

Mr. PRINDLE—The particular one I read from was on page 157, but you will find plenty of similar provisions scattered through other Constitutions.

Mr. E. A. BROWN—It strikes me that the tocsin of alarm is sounded on the floor of this Convention with altogether too much earnestness and too much frequency. I do not believe, for one single moment, that the Erie canal or the lateral canals are to be blown up by a volcano or swallowed up by an earthquake, or that they are to be entirely swept away in any one section by the repetition of a flood. I do not believe that the world is to come to an end at present, or that the part of the earth's crust on which the State of New York is located is likely very soon to crumble to pieces. Why, if we are to believe a certain high authority among the Millerites, the destruction of this world is postponed for about a million of years. I think we may rest, if that authority is to be relied upon, assured of the security of the future as we have enjoyed security in the past. We are not, it seems to me, by any legitimate argument to be urged, to adopt a course of conduct here that is based upon any supposition of the entire destruction of the Erie canal or any other public work, or of any considerable portion of it. Right here, let me call the attention of this committee to the fact which seems to be ignored by some gentlemen in their arguments, that the public works of this State are not in the same condition they were in 1842, or in 1846 or in 1854. Then, for a portion of the distance we had the Erie canal theoretically even—only forty feet wide at the surface, four feet deep, allowing a passage for boats drawing about three and one-half feet of water; we had a large portion of the work of enlargement in progress, and but partially done, suffering from its unfinished state, and going to destruction at great and increasing loss to the State. We had that portion of the work which was finished practically of very little importance, because the whole work was not finished. The Black River canal was commenced but not completed, and the water designed to be drawn from that river for the supply of the long level on the Erie canal was unavailable. It was not finished in 1842 nor in 1846. In consequence of the partial completion of the Genesee Valley canal, the partial completion of the Black River canal, and the unfinished condition of the enlargement of the Erie canal, all these great works in their unfinished state, and only partially constructed as originally contem-

plated, were of very little or no use whatever—the expenditures previously made were of no practical benefit, and the work already done was going rapidly to destruction—whereas, now, we have theoretically an Erie canal enlarged to seven feet in depth and seventy feet in width of water surface, and enlarged double locks. There is no such pressure in the direction of large and immediate expenditures as there was at the time to which gentlemen have alluded. There is no such cause to go to the people's pockets or to the treasury of the State to raise large sums of money, and complete such unfinished works which then were comparatively or absolutely useless for want of such completion. What do we hear? We have, it is supposed in the minds of certain ardent gentlemen, the probable necessity of a great enlargement of the Erie canal. We have a supposed necessity for the completion of the extension of the Chemung canal, but, comparatively speaking, it is but a small expenditure that is required to finish it. The Champlain canal requires comparatively only a small expenditure, I mean compared with the expenditures required in 1842, 1846 and 1854. Now is there a sufficient provision left in this Constitution, if amended as proposed by the gentleman from Cayuga [Mr. Rathbun], to authorize the Legislature of the State to furnish, if need be, a million of dollars by taxation, in addition to the current revenues, if any emergency which, in the judgment of the Legislature or the people, should arise at any time, requiring such expenditures? Mr. Chairman, submit these measures to the people, when the emergency arises; they understand all such questions, and will properly appreciate and decide them. But do not leave open the door for these large expenditures (without proper guards and limitations) which, I say to this committee and to these gentlemen, are alarming the people of the State. They do not understand why it is that when one enlargement is scarcely completed, it needs something more, a further and greater enlargement is called for. But I am inclined to believe that if we perfect and finish the enlargement of the Erie canal to the full extent which was first contemplated, of seventy feet width and seven feet depth, clear out the channel, put in order the locks, it will be able to meet all the demands now made or soon likely to be made upon it. I say the people of the State do not understand the meaning of providing, either expressly or by implication, in this Constitution, for the power of expending eight, ten, twenty or fifty millions of dollars for schemes which, probably, in their judgment, have in them jobs. Sir, jobs have become alarming to the people of this State, and they call upon us here, now, with no small, no uncertain voice, to expend only what is absolutely necessary to protect and preserve the public property of this State for the best use that can be made of it when thus perfected and put in complete order. Now, I want to say one word in support of the amendment of the gentleman from Cayuga [Mr. Rathbun]. I adopt the speech of the honorable gentleman from Oneida [Mr. Kernan]. I believe it is sound in all its substantial parts, and applicable to this ques-

tion, and is an argument for that purpose unanswerable.

Mr. YOUNG—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Young, and it was declared lost, on a division, by a vote of 37 to 48.

Mr. BECKWITH—I had not intended to say anything on this question, but I wish to call the attention of the committee to a fact. If they look at this policy of the Finance Committee they will see that it provides that the debts of the canals shall all be paid in 1878. They then, by the last section, provides that no money shall be expended for building the State Capitol until the expiration of ten years. Now, I would like to know why that ten years is fixed upon if not for this reason: that then the canal debt, except the eighteen millions, will be paid, and that the moneys which arise from the revenues of the canals may then be used to build the Capitol, and the poor canals go without any expenditures except for ordinary repairs.

Mr. CHURCH—The last section is not now under discussion, but I will answer the question of the gentleman by saying that the ten years were fixed upon because by that time the large bounty debt will have been paid by the people by taxation.

The question was put on the amendment of Mr. Rathbun, and it was declared lost, on a division, by a vote of 39 to 47.

The question recurred on the motion of the gentleman from Onondaga [Mr. Alvord] to strike out the entire section, and, on a division, it was declared carried by a vote of 49 to 41.

Mr. SPENCER—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Spencer, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT *pro tem.*, Mr. Folger, resumed the chair in Convention.

Mr. SMITH, from the Committee of the Whole, reported that the committee had had under consideration the reports of the Committee on the Finances of the State and the Committee on Canals, that they had made some progress therein, but not having gone through therewith, had directed their chairman to report that fact to the Convention and ask leave to sit again.

Mr. BECKWITH—I move that the request be laid on the table.

The question was put on the motion of Mr. Beckwith, and it was declared lost.

The question recurred on granting leave, and it was declared carried.

Mr. KETCHAM—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Ketcham, and it was declared carried.

So the Convention adjourned.

WEDNESDAY, September 18, 1867.

The Convention met at nine o'clock.

Prayer was offered by the Rev. E. L. MAGOON.

The Journal of yesterday was read by the SECRETARY.

Mr. A. LAWRENCE—There was a slight error, I think, in stating my leave of absence. It was for eight days after the session of this day.

The Journal was corrected accordingly, and was approved.

Mr. SILVESTER presented the petition of H. D. Wright and others, citizens of Columbia county, asking for the abolition of the Board of Regents of the University.

Which was referred to the Committee of the Whole.

Mr. ARCHER presented the remonstrance of the trustees and instructors of the Marion Collegiate Institute, against the abolition of the Board of Regents of the University.

Which took a like reference.

Mr. EDDY presented a remonstrance of the trustees and principal of the Hartwick Seminary, on the same subject.

Which took the same reference.

Mr. KETCHAM presented a remonstrance from the trustees and instructors of Red Creek Union Academy, of like import.

Which took the same reference.

Also, a remonstrance from the trustees and instructors, etc., of Leavenworth Institute, Wolcott, of like import.

Which took the same reference.

Mr. GRAVES—The person who was to represent the liquor dealers' and importers' association still remains sick. I give this notice so that the Convention will understand that its business will not be interrupted by the anticipated meeting before the committee.

Mr. AXTELL—I desire to make an explanation in regard to the report of the Committee on State Prisons. I find some statements in the Albany *Argus* this morning in regard to that report which are not correct. I should hardly occupy the time of the Convention in making the explanation if it were not for the fact that that paper has a quasi-official relation to this body. The statement is that the democratic members of the committee, Mr. Conger and Mr. Cochran, dissented from the report, as did Mr. C. C. Dwight. The portion of the statement relating to the democratic members, Messrs. Conger and Cochran, is incorrect. The attack in this paper is upon the police system reported by the committee. In regard to that portion of the report, inasmuch as this paper has made this statement, evidently with the design of making political capital out of it, I will say here, without violating any confidence, that it originated with the democratic members of that committee, and it was placed in the report by the concurrence of some of the republican members of the committee, simply for the purpose of placing it before this body.

Mr. VREDER—I rise to a point of order. The gentleman is not stating a question of privilege, but discussing the report.

The PRESIDENT—The Chair understands the gentleman to make an explanation in connection with the report, as he may do, under the rule.

Mr. AXTELL—I was saying that it was introduced into the committee by a democratic member of the committee, and was generally supported by the democratic members of the committee, and was placed there merely for the purpose of bringing the matter before the Convention. That is, it was concurred in by myself and other members of the committee, for the purpose of placing the matter

before the Convention. The only way in which Mr. Conger and Mr. Cochran dissented from the report, was, as I recollect it, that they did not concur in the recommendation as to the appointment of the respective superintendents by the Governor.

Mr. GERRY—I desire to call up my resolution, offered yesterday, asking for certain statistical information from the board of commissioners of metropolitan police.

The SECRETARY read the resolution, as follows:

Resolved, That the board of commissioners of the metropolitan police be requested to furnish this Convention, as soon as practicable, with a tabular statement showing: First, the aggregate number in the force in each year from the year 1857 to the year 1887, both inclusive; second, the gross amounts paid in each year as salaries to the commissioners, superintendents, inspectors, surgeons, captains, sergeants, patrolmen and clerical force respectively during the period above mentioned; third, the number of men in each year expelled or dismissed from the force during the period above mentioned, with the causes or grounds of dismissal briefly stated; fourth, the number of complaints preferred in each year before the board of commissioners against members of the force, together with the disposition of such complaints during the period above mentioned.

Mr. GREELEY—We have passed one or two series of resolutions here which involved the State, as I understand, in considerable expense. While I am sure we do not need this information, I would move as an amendment, to insert the words "Provided, this information is not to cost money, to be charged to the State."

Mr. GERRY—My object in offering this resolution (and I desire that the gentleman from Westchester [Mr. Greeley] will favor me with his attention) is not for the purpose of incurring expense, but merely to obtain from the board of police commissioners certain statistical information not contained in any document which it has previously furnished to the Convention. I do not see how this can involve any additional expense whatever, because this board of commissioners of metropolitan police has a large clerical force constantly on hand. I do not know that it has any power, under the present act, to incur on our behalf additional expense. The board in question receives from the people over two million and a half of dollars annually for its supposed necessary expenses, and surely it cannot be necessary for it to hire another clerk for the purpose of furnishing this information, which can be done upon an hour's notice. I desire to have some statistics furnished—information for this Convention, when the question of State prisons and the report of the Committee on Cities comes up.

Mr. GREELEY—So we thought when we voted for the resolves calling upon the county clerks and others for certain information, with the understanding that it was not to cost anything; but I understand that there are pretty heavy bills for that information coming in. Suppose these commissioners are not specially delighted with this inquiry, and say, "We are required to em-

ploy a large clerical force outside of our regular force to furnish this information," and they say, "We will not furnish it without extra pay." I am very desirous that our total outlay shall not overrun the amount of the appropriation—\$250,000. The gentleman does not say whether he accepts my amendment or not.

Mr. GERRY—I decline to accept the amendment simply for the reason that, in my judgment, it is wholly unnecessary, and, in the second place, because it may furnish a pretense, in the event of its not being deemed desirable to furnish the Convention with that information, for the withholding of it. I do not recognize the legal right of any board of local officers in the pay and service of the State to present bills for furnishing legitimate information to this Convention on its request. If the commissioners do not see fit to furnish the information they must stand or fall by their own act. But I do not apprehend any such difficulty, because all the information which has been called for by this Convention hitherto has been cheerfully and promptly furnished. In respect to the canal department, that was a different matter. It was a call for a large number of figures—difficult statistics, which needed the exclusive attention of one clerk for a long period. My resolution calls merely for certain statistics in a form which will show at a glance the real position of certain matters involved in the reports of the Committee on State Prisons and the Committee on Cities.

Mr. ALVORD—I will ask the gentleman from Westchester [Mr. Greeley] whether he is aware that any such bills have been paid as he has spoken of here? I understand the Comptroller refused to pay any such bills; I think justly, too.

The question was put on the amendment of Mr. Greeley and it was declared lost.

The question was put on the resolution, of Mr. Gerry and it was declared adopted.

Mr. GERRY—I call for the consideration of my resolution, offered yesterday, calling for similar information from the board of excise.

The SECRETARY read the resolution, as follows:

Resolved, That the commissioners of the board of excise of the city and county of New York be requested to furnish this Convention, as early as practicable, with a tabular statement showing: First, the number of licenses granted by them from the time of the creation of the board to the present time, and the gross amount paid for such licenses; second, the number of complaints preferred against such licensees during the same period, by whom preferred, whether by citizens or officers, and the result of such complaint; third, the number of licenses applied for and refused during the same period; fourth, the number of licenses revoked during the same period, with a brief statement of the grounds of such revocation.

Mr. VEEDER moved to amend the resolution by adding thereto the following: "Fifth, and in what manner the funds so received have been disbursed."

Mr. GERRY accepted the amendment.

Mr. GRAVES—I would like to inquire the object of that resolution.

Mr. GERRY—The object of this resolution is to ascertain, as far as practicable, in a summary way, what is the course pursued by the commissioners of this board of excise, and the mode in which their powers are exercised in the collection and expenditure of the large sums of money which they have the power to receive for the licenses they grant. I also want to ascertain to what degree the influence of the police department is perverted and combined with the exercise of this power by this board of excise for the revocation of licenses. The matter is necessarily involved in the consideration of some sections of the reports of the Committee on the Powers and Duties of the Legislature, which stands over under the order of unfinished business, on the calendar of the general orders of the Convention.

Mr. GREELEY—The crime of the board of excise is enforcing the law of the State. That is their offense, which makes them exceedingly obnoxious to some gentlemen of this Convention. The law says that the sale of liquors shall be conducted in such a way and under such restrictions. It has been customary in our city to disregard these restrictions, and let every body sell what he pleases, when he pleases, and how he pleases. The present board of excise has done what no other board has ever done, and for this they are subjected to attack here and elsewhere. I believe that this information could not be obtained without making a volume of five hundred pages, costing a large sum to print, and perhaps another large sum for extra clerk hire to make it out. I trust that this Convention will not adopt that resolution.

Mr. GERRY—If the gentleman from Westchester [Mr. Greeley] had paid attention to the reading of this resolution by the clerk, he would have seen that it called for nothing but certain facts and sums total, only the gross amount of figures. The response ought not to cover half a sheet of paper, and could be readily drawn, if the records are properly kept, in a few hours. I make no charge now against the board of excise, nor do I desire to throw any imputation upon that board at the present time, because the statistics are not here. I ask, however, for the information of this Convention, that these statistics be furnished. When they are furnished, it will be proper to comment upon them. Sir, I am at a loss to understand this attempt on the part of the gentleman from Westchester [Mr. Greeley] to stifle inquiry into these matters. He certainly has not previously pursued that course in this Convention so far as regarded any information which the gentleman himself was desirous of obtaining in regard to the canal frauds. The information has been cheerfully furnished. I, for one, have voted invariably for the furnishing of all information, when asked by any member of this Convention, and I hope the same privilege will be extended to me.

Mr. KINNEY—I was about to inquire why this information was not sought for at an earlier day—why it was postponed until the time when our labors are about to be concluded, and asked for under circumstances which clearly indicate that it cannot be received until after this Convention has adjourned. It seems to me that it would

be very strange to ask for this information at this very late day.

Mr. GREELEY called for the reading of the resolution, and it was again read.

Mr. GREELEY—If the Convention has given attention to the reading of the resolution it will have seen that there are to be various reasons given why they revoke licenses, etc., etc. There is probably a hundred different reasons—a hundred different causes for different revocations. I believe there have been some two hundred licenses revoked—generally for gross violations of the conditions upon which those licenses were granted. These violations are various. It is not possible that this information can be given in a more table of the size of your hand. There must be specific explanations. Then, the law of the State dictates the manner in which the proceeds of licenses shall be applied. I think they were applied the first year to pay the police. Now, I understand, they are applied to pay off the city debt. Thus these commissioners will pay over a million of dollars per annum of city debts from these charges this year, where we formerly got nothing, at all—not enough to pay the cost of the commission. I have no objection to any tabular statement being made; but I insist that we could not procure that information, and get it printed, without a heavy cost to the people; and, for that reason, I am opposed to the resolution. I move to lay it on the table.

The question was put on the motion of Mr. Greeley, and it was declared carried, on a division, by a vote of 48 to 30.

SEVERAL MEMBERS—No quorum!

Mr. E. BROOKS called for the ayes and noes.

A sufficient number seconding the call, the roll was called by the SECRETARY—and the motion of Mr. Greeley was carried by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Andrews, Archer, Beadle, Beckwith, Bell, Bickford, E. A. Brown, Case, Cheritree, Clarke, Cooke, Corbett, Curtis, C. C. Dwight, T. W. Dwight, Eddy, Ely, Endress, Evans, Farnum, Ferry, Flagler, Grant, Graves, Greeley, Hadley, Hale, Hammond, Hand, Ketcham Kinney, Lapham, A. Lawrence, Lee, McDonald, Morrill, Merwin, Miller, President, Prindle, Rathbun, Root, Rumsey, Seaver, Smith, M. L. Townsend, Van Cott, Wakeman, Wales—52.

Noes—Messrs. Alvord, Axtell, Barto, Bergen, E. Brooks, J. Brooks, Champlain, Church, Clifton, Colahan, Comstock, Duganne, Fowler, Fuller, Garvin, Gerry, Gross, Hardenburgh, Hatch, Hitchman, Hutchins, Kernan, Mattice, Monell, More, Morris, Murphy, A. J. Parker, Pierrepont, Potter, Reynolds, A. D. Russell, Schell, Schoonmaker, Silvester, Spencer, Stratton, Strong, Tilden, S. Townsend, Veeder, Verplanck, Wickham, Young—44.

Mr. GERRY called up the following resolution, offered by him yesterday, which was read.

Resolved, That the board of commissioners of the metropolitan fire department be, and they are hereby requested to furnish this Convention, as early as practicable, with a tabular statement, showing: First, the number of men in the department during the years 1865, 1866 and 1867

respectively, and the amount of salaries paid in each of such years; second the number of engines transferred from the old fire department, and the number of new engines added during the same period, stating each year separately, together with the cost in each year of such addition; third, the number of horses in use in each of such years with the cost of the same, and the cost of their keeping; fourth, the number of fires which have taken place within the precincts of the department during each of such years, with the statement of the amount of probable loss by such fires in each year, so far as the records of the department show the same.

Mr. KETCHAM moved to lay the resolution on the table.

The question was put on the motion of Mr. Ketcham, and it was declared carried.

Mr. DUGANNE offered the following resolution:

Resolved, That after the disposal of the report now under consideration, no remaining report of any committee shall be considered in Committee of the Whole more than two days, the first day's debate being limited to hour speeches, the second to half-hour speeches, and on the third day each report shall be disposed of in Convention, debate thereon being limited to fifteen minutes on each amendment, and to two speakers on each side.

Mr. ALVORD—I move that that resolution, for the present, lie on the table.

The question was put on the motion of Mr. Alvord, and it was declared carried.

The Convention again resolved itself into a Committee of the Whole on the reports of the Committee on Finances and the Committee on Canals. Mr. SMITH, of Fulton, in the Chair.

The question was announced to be on the adoption of the ninth section.

Mr. WALES—Mr. Chairman, I move to amend by substituting the following:

SEC. 9. The Legislature shall not sell, lease or otherwise dispose of any of the canals of this State, the revenue of which is sufficient to pay the expenses of collection, superintendence and ordinary repairs thereof; but it shall remain the property of the State and under its management.

Mr. Chairman, I offer this amendment because I cannot see why the State should prevent itself from disposing of any of its property, which is now or may hereafter become unprofitable. In my judgment, we ought not to tie ourselves, for a term of twenty years, to a financial policy that would sink millions of the people's money. During this great debate much has been said of the glory of our canal policy. Sir, on us assembled in this hall, on the people of this State, that glory can be but faint and secondary. Perhaps the less we say under that head the better. That field has been heretofore reaped. That harvest is already gathered. Those golden sheaves have been securely garnered. The immortal Clinton and his worthy co-laborers and compeers, have a vested right in those great honors, and there we had better let them rest. But they left to us, as the great result of their glorious achievement, the use and the utility of

the canals; and we shall honor or dishonor their memory, as we pursue a course of wisdom or folly, in the use we make of these great works. They left us a royal inheritance; and if we will rid ourselves at once and forever of this utopian idea, that to us belongs the glory instead of the utility of this inheritance—if we only treat this subject with simple plain common sense, we are endowed as no other State ever was, or perhaps ever will be endowed. Sir, it is said by eminent gentlemen on this floor, that when the debt for which the revenue of the canals is slightly pledged, shall be ultimately paid, we are to hold the canals for the benefit of the great West, collecting only such tolls as are necessary to keep them in repair. Sir, I protest, with all the energy and earnestness of which I am capable, against the idea that we are to receive no revenue from our canals. The project of running them for the benefit of the people of the Western States would be an act of injustice to our own citizens, uncalled for by the comity of States. What right have they to ask of us the use of this great investment without adequate remuneration? Whose great capital do we thus propose to use for the exclusive benefit of strangers? At whose expense do we propose this costly magnanimity? Why, these canals of the Empire State belong to the people of the State, and if we give the just and proper revenues of them to those who speculate in the produce of the great West, or even to those whose toil raises that produce, we do it at the expense of our own citizens; for every dollar so given must be replaced by taxation. Sir, no people have ever had such opportunities presented to them for their poor men to rise to wealth as our own country. Two causes have adduced to this result. These causes were cheap lands and low taxes. So far as this State is concerned these causes are passing away. Your agricultural lands, in many parts of the State, are worth fifty, seventy-five, one hundred, two hundred dollars the acre, and your taxation is enormous. It looks like a gloomy prospect for the poor young men of this State, and yet we have the proposition virtually to tax these young men for the benefit of those who are, in some instances, given lands by the government and who in all instances occupy cheap lands. Sir, I ask that the finances of this great State be conducted as any plain business man would manage his own. Let us, men of this Convention, do justice to our poor young men. Let us hold the princely revenues of our imperial canal for their benefit, rather than for strangers who know us not. Let us sell, lease, give away our unpaying canals. Let us infuse a just, economical, and liberal policy into the management of the paying ones; and without taxation, we may educate every child in the State, and endow such charities as no other State ever endowed. By avoiding taxation, we will unfetter labor, and thereby enable thousands of worthy young men to rise to competence, affluence, wealth, who would otherwise be chained down to a life of poverty; and to toil only partially remunerated. As a necessary result their families would share their condition in life, and much less intelligence and refinement would be diffused over the State. Sir,

let us avail ourselves of our just opportunities. Let us hold within our grasp the rich inheritance that the genius of our great men, now no more, bestowed upon us, that we may place our State higher in material prosperity than any other State ever stood.

Mr. VERPLANCK—I would ask the gentleman from Sullivan [Mr. Wales] which of the canals he means. I want to know which one he refers to.

Mr. WALES—I did not intend to designate any particular canal.

Mr. VERPLANCK—I only ask the question in order to see whether, on an intelligent examination, the gentleman's theory would turn out to be well founded. I understand him to say he does not designate any of the canals, or he does not pretend to say which one.

Mr. GREELEY—The State of New York, early in the present century, embarked in a bold and beneficent enterprise. The merit of the great and good men who devised that undertaking, and of that majority of our people who so steadily, so nobly sustained them, flows largely from the fact that this enterprise was novel, anomalous, extraordinary—quite apart from and outside of the regular operations and ordinary sphere of government. A high and broad public necessity demanded the construction of a practicable water communication between the ocean and the lakes; and that communication was decreed and effected, although it was fully understood that the enterprise might prove, as a financial operation, unprofitable. The people of our State admitted and braved this peril; they took the risk of constructing canals that might never repay their cost in tolls, because they felt that their incidental benefits, in creating avenues for commerce and markets for their products, in subduing the forests and increasing the population and wealth of the State, would far overbalance the cost, even though the entire outlay expended in constructing their canals should have to be repaid by taxation. But suppose, Mr. Chairman, that a capitalist or company had stood ready to construct these canals as a commercial enterprise—had said to our State, "We will construct the canals you meditate at our own cost and risk if you will give us the necessary legislation, and confide the work to us, giving the State all the incidental benefits of their construction, and reserving to ourselves only the chance of reimbursement and profit from the tolls"—who believes that the people or any respectable minority of them would have chosen to build the canals themselves? The canals were constructed by the State, at her own cost and risk, because they could not or would not otherwise be constructed at all. It was Hobson's choice—this or nothing. But the canals are no longer a burden, nor a speculation; they are a large and valuable property. They now afford a magnificent revenue over the cost of their maintenance, and even beyond the million or so extra annually stolen from them by rascally contractors and jobbers, through the connivance of dishonest and unfaithful officers. They are worth many millions, even under State management; they would yield a far larger net revenue if they were owned and controlled by business

men—if the vigilance, economy, and thrift of personal interest were enlisted on the side of increasing their traffic and income. Mr. Chairman, most of the States which followed New York into the transportation business—which constructed costly public works and incurred heavy debts in order to provide their people with cheap means of transit—have sold out their canals and railroads, paid (or swindled) their creditors, and retired from the business. It seems to me high time that New York should follow them out of this labyrinth, as they followed her into it. I believe that the interest of the State and the interest of the canals and their customers, alike demand the discontinuance of their past relationship. I believe that the canals would be far more frugally managed, more efficiently kept in order, with fewer breaks, a more uniform abundance of water, if they were now to pass into private hands. I believe they would, in private hands, be enlarged and improved so fast and so far as they need to be, and in all things keep pace with the wants of the public and the expansion of commerce. But, I must meet and defy the venerable bugbear, the danger of monopoly. "What if the Central railroad shall buy the canals?" is the appalling question. In answer I hope it will do so. The moment that purchase is made, it becomes the interest of the railroad to cherish and increase the business of the canals. Now, if there be 100,000 bushels of apples or potatoes at Rochester or thereabout to be moved to tide-water, and the railroad has capacity for the work—wants to do it—its managers will fix their price of the transportation just low enough to take it away from the canal; and they *will* take it away. Their prices are flexible; the canal tolls are inflexible. The railroad men are on a keen watch for freight; the State sits passive and indifferent. Of course the railroad wins. Put the canals into individual hands—no matter whether those of the railroad men or others—and all will be changed to the advantage of the canals. Mr. Chairman, I do not believe that the canals have seen their best days. I believe that, as our cities grow, our manufactures increase, the West must send more and more food to the East, and that this must mainly be transported on the canals. The West will each year export a smaller and smaller *proportion* of her annual product; but that product will steadily increase, so that an eighth of all she grows in 1870 will be more than a fourth of what she grew in 1850—and so on indefinitely. Mr. Chairman, we hear much, and justly, of canal frauds and canal corruptions. I do not doubt their existence; I suspect that what is novel in the matter is that they are better exposed than formerly. So long as the canals remain State property, they will be a prolific source of corruption, and their management will be inefficient. Your engineers and superintendents will be party wire-workers; your lock-tenders and minor employees will be party dependents if not party paupers. I do firmly believe that, were the canals in private hands, they could and would do twenty-five per cent more business than they can and will do under State control, in the hands of any party whatever. As a life-long friend and supporter of

the canals, I offer the following substitute for section 9 of the committee's article:

Sec. 9. The Governor, Lieutenant-Governor, Secretary of State, Comptroller, and Attorney-General, shall, on and after January 1, 1868, advertise in twelve leading journals of this State, once a week for six weeks, inviting proposals to purchase jointly or severally the canals of this State on the following conditions:

1. Each bid shall be backed by a deposit with the Treasurer as security for the fulfillment of its stipulations of five per cent of its amount in lawful money of the State, or national stocks, or bonds whereof the accruing interest shall at all times be due and payable to the depositor, as aforesaid.

2. The tolls on the canals or any of them shall not be raised by the purchaser or purchasers above the rates now charged; but they may be reduced below those rates and raised to any point not above them, at the discretion of the purchasers.

3. The purchasers shall covenant to keep the canals in good navigable order for not less than six months in each calendar year, under the penalty of a forfeiture to the State of one-tenth of their cost for each year of failure.

4. The bids are to be sealed and lodged with the Comptroller between the 1st and 8th of August next, and they shall be opened by the State officers aforesaid on Tuesday, the 8th, at 3 o'clock, P. M.

5. On Wednesday, the 9th, the State officers aforesaid shall decide, by a majority vote, which among the bids duly made are most favorable to the State, and shall accept such bid or bids, and give notice of such acceptance to the bidders, retaining their deposit of security, and notifying all the unsuccessful bidders that their deposits are subject to their order.

6. The State officers aforesaid shall notify the people of the State of their action aforesaid, and the Secretary of State, in his notice to the sheriffs for the ensuing State election, shall specify that a vote is to be taken at such election on the question of selling or retaining the canals.

7. The inspector of elections in each district shall provide a box labeled "canals," and the Secretary of State shall cause to be printed and distributed two million of ballots reading on the back "Canals," and on the face "Sell the canals—Yes," and a like number reading on the back "Canals," and on the face "Sell the canals—No;" and every elector shall be authorized to vote one or the other of these ballots as he shall see fit.

8. These ballots shall be duly counted and returned, and the State canvassers shall officially canvass the return from the several counties, stating the aggregate number for and against selling, respectively, and shall officially and conclusively declare that the people, by a majority vote of those voting on the question, have decided to sell or not to sell the canals.

9. If a majority shall have voted not to sell, the securities or money, or both, of bidders remaining in the keeping of the Treasurer shall forthwith be subject to their order. But if a majority, as aforesaid, shall have voted to sell, then the successful bidders shall be notified thereof, and required to

pay over to the State Treasurer, either in lawful money of the United States, in State bonds at par, or in United States six per cents, commonly known as five-twenties, at par, not less than twenty-five per cent per month of the stipulated purchase-money until the whole amount shall have been paid, with lawful interest on such sum or sums as shall have remained unpaid from the date of the notice to them of the vote aforesaid. And whenever the payments on any bid thus accepted shall have been fully made, the State officers, aforesaid, in behalf of the State, shall execute and deliver to the purchasers a full conveyance of all the right, title, and interest of the State, in such canal or canals, their feeders and appurtenances, with the right to enlarge and improve the same at their discretion, subject to the reservations aforesaid.

10. It shall be the duty of the Comptroller, under directions of the State officers aforesaid, to devote the money and securities so paid and received for the canals, to the satisfaction and extinction of the several debts of the State, so far as the same can be done without prejudice to the public interests. And when any State debt shall thus have been paid off, then the tax or taxes imposed for the payment of interest or principal of said debt shall no longer be levied nor collected.

Mr. VERPLANCK—The gentleman from Westchester [Mr. Greeley] has spent a good deal of time and with some propriety, too, in reference to the little progress that we were making in the business of this Convention. He has now introduced a proposition that he must know cannot prevail; and as he has a newspaper, published every day, and can express his sentiments through that paper, it seems to me that he might be contented with using that medium instead of introducing this amendment and consuming the important time of this Convention. The Convention of 1846 inserted a similar provision to the one recommended by the Committee on Finance. And so proper has this provision been considered that it was not only adopted by the Committee on Finance, but by the Committee on Canals; and all the dissenting reports that have been made have contained a provision similar to this. The fifteen men on the Canal Committee, the fifteen men upon the Finance Committee, making thirty in all, have each of them recommended that this article should remain in the Constitution, and that the canals should not be leased or sold, but should remain the property of the State forever. And seven more gentlemen, who reported on the powers and duties of the Legislature, took the same view. Now, sir, this amendment is offered to consume the time of this Convention. This Convention are now holding three sessions each day, with a view of getting through its business and submitting the Constitution to the people for their approval at the November election; and yet the gentleman from Westchester [Mr. Greeley] has introduced a proposition so preposterous and visionary that I trust members will not consume the time of the Convention in discussing it.

Mr. M. I. TOWNSEND—My friend from Sullivan [Mr. Wales] seems, by his propositions, to have reversed the facts in the old fable of the revolt of the members against the bell. We

learn in storied fable that on a certain occasion the members became very much enraged at the belly because the belly ate and enjoyed itself and they had all the work to do. They revolted; and in the course of nature the belly sickened and the members soon languished with it, and very soon become disgusted with the revolt and with their great effort to equalize matters and do justice to the whole frame. Now my friend from Sullivan [Mr. Wales] has proposed to have the belly revolt against the members. I think if his proposition should be carried out, and he should live to see the time when the members were no longer feeding the belly, that he would find that the belly would suffer in the same degree that the members did in the fable. These lateral canals are a part of the great canal system of the State. If we go and put them into the hands of hostile parties—into the hands of those whose interest it may be to prevent the prosperity of the great canal system of the State—we shall be doing precisely the work that would be done by crippling the members for the sake of promoting the greater prosperity of the people. I have no idea that the State of New York is prepared for a moment to entertain a proposition of this kind—not for a moment; but I am fully confident that the proposition of the gentleman from Westchester [Mr. Greeley] will strike the people of the State with profound astonishment. What would be thought of a man who should voluntarily cut loose the integuments that cover the great arteries of his neck, and for a sum of money allow a stranger to grasp those arteries, and hold them in a situation in which the blood might flow or be checked in its course as this outside stranger might see fit to permit? And yet this is precisely the proposition of our friend from Westchester [Mr. Greeley]. It is a proposition to lay bare the great arteries in the neck and put those arteries in the hands of strangers, and allow hostile parties to control them, and to say whether the life may go on joyously, and the blood be allowed to flow or be checked precisely as these outside and hostile parties may permit. This canal enterprise was not entered upon as a pecuniary speculation; it was entered upon for the benefit of the people of the State in a great measure, regardless of the question whether there should be a return in revenue or not. In that day there were doubting Thomases—not a few objections were urged against the whole scheme. In a word a hostility to the measure was developed such as has rarely been shown to any project in later times; and yet there is no man who does not admit that our canals have become a success—a success so great that we may well boast of our position, as in advance of every State in this Union, and in so far as internal communication is concerned, almost in advance of any country on the face of the earth. And yet, sir, in the face of that fact, it is proposed to throw all this away, and to give up all advantages of our position. And why? To what end? That somebody may make some money out of the canals, and monopolize and enjoy those revenues which now come to the treasury of the State of New York. Suppose that these canals would be a source of immense profit in private hands,

would that fact benefit the people of the State? The gentleman from Sullivan [Mr. Wales] tells us that some of these canals do not pay, and that we should dispose of them because they do not pay. Is that the principle upon which the State has acted in reference to the great interests of the people. The State gave three millions of dollars to the New York and Erie railroad.

Mr. WALES—I do not propose that we shall sell any of the canals, but to leave it to the Legislature.

Mr. M. I. TOWNSEND—My friend is playing a little upon words. I believe he is not a lawyer; but few of us who are could play upon words as successfully. He proposes to except from his proposition against selling such canals as do not pay, and by implication proposes that if a canal does not pay it may be sold; he proposes to have us say so. The State gave three millions of dollars to the New York and Erie railroad. Does that pay? Is there any benefit from that three millions of dollars to this State in the shape of revenue? And yet, is there a man sitting in this house this morning that would hesitate in saying that it was a wise and beneficent appropriation to the advantage of the State—an incalculable advantage to the State, that the Erie railroad should be built? Look at the tons of freight carried along the line of that road. Look at the commerce which now exists along the line of that road. And though the road does not pay anything into the treasury of the State, does it not benefit the body politic? Is there any man that would sell out the interest which the State has acquired in the building of that road? Will any gentleman in this Convention contend that there is one of these lateral canals that does not pay in the prosperity that it adds to this State in the additions to the business of this State, in the increase of towns, of produce and merchandise, along the line of those canals, in the increase of the value of the taxable property along those canals? And yet, forsooth, we are to sell them, and for what? Sell them in order that some Jew (I speak it not offensively to the race of Judah), but that some Shylock may obtain possession of these canals in connection with the railroad that he owns by the side of it, and prevent its competition with the railroad, and thus enable him to make precisely what charges he pleases for the carrying of the produce of the country to the great marts of the world. Why, sir, if it were not for the Erie canal it would not be possible to move the products of the great West to the sea-board in this direction. It will be seen that my friend from Sullivan [Mr. Wales] has entirely forgotten in his argument a very important part of the facts of the case—in that part of his argument where he says that we are not to keep a thoroughfare for the products of the Western States to the ocean if it be a burden upon the people of this State to do it. The lateral canals—the so-called non-paying canals—sir, do not furnish a thoroughfare, but, sir, they furnish a thoroughfare for the people of the State of New York. These are the people that are interested in the lateral canals, and practically no other people are interested in them. Go and fill up the lateral canals, go and

let the water out of them and you will find a state of things like this: two hundred miles west of Chicago you start a bushel of wheat for the seaboard, and it costs forty cents to carry it two hundred and ninety miles. That bushel of wheat arrives at Chicago. It starts then for the city of New York. It is brought from the city of Chicago to the city of New York for sixteen cents—expense of elevator at Buffalo and tolls upon the Erie canal included. The transportation for 1,500 miles by water is made for sixteen cents against two hundred and ninety miles by railway at forty cents. It is proposed by the gentleman from Sullivan [Mr. Wales] to turn over the people who are accommodated by the lateral canals to the tender mercies of institutions that charge forty cents a bushel for grain transported two hundred and ninety miles as against a charge of sixteen cents for 1,500 miles by water. That is the proposition which is commended to the lips of the people of this State by the gentleman from Sullivan [Mr. Wales]. I would say to the gentleman from Westchester [Mr. Greeley] that if there are some of these canals that do cost something to the State, if it be a good and important object that is secured by the State's keeping them in its own control, we ought not to part with them. It is a wise policy that the State should assume burdens for the purpose of accomplishing greater good. I have not forgotten how, in the dark days that have just passed, when we knew not precisely what would be the result of the great struggle in which we were engaged, a distinguished statesman came forward and proposed, for the purpose of accomplishing a greater good, to have the loyal States assume \$400,000,000 of rebel debt. It was to accomplish a noble object; it was the broad view of a statesman that proposed it, and I believe that we had better keep a little of that great-heartedness in this Convention now and not sit down to calculate here the pecuniary loss of a few dollars here and a few dollars there when those few dollars keep up the arterial system of circulation in which the very life of the State of New York is kept active and robust. It was a capital crime formerly in England to imagine the death of the king. It seems to me scarcely less a crime to imagine the yielding to private and perhaps hostile hands the control of the canals of the State.

Mr. BERGEN—As long, sir, as the State owns the canals, they should, in my judgment, so manage them as to make them advantageous to the public. These canals, by their extension, I believe, should be improved if the improvement would add to the revenue. But, sir, the State, unfortunately for itself, in my judgment, has built canals that have not paid, and never will pay, the cost of their maintenance and collection of tolls. Let them be "arteries" or not, I say that we have unfortunately built canals of this description. An individual or a company owning the canals of this State would foster those which are productive, and they would soon abandon those which are not productive. In managing the interests of the State, in my judgment, the same economy, the same prudence, should be used, as in the management of individual interests. What individual, sir, in this Convention, would continue to

operate canals, or any other kind of business, which did not pay the cost of its maintenance? It would be ruinous. I would not do it, nor you. For reasons of that kind, sir, as prudent men, we should not object to these unproductive canals being sold, or even given away. The longer they are held by the State, the worse for the interests of the State. They may be advantageous to the localities in which they exist; but, sir, are we, in other localities, to be taxed annually for their support? Are we to pay a bounty on every bushel of wheat or stick of timber they carry to market, and pay the expense of transportation upon our own, at the same time, without any help from the public. It may be just in the estimation of some gentlemen; but, in my mind, it is unjust—it is unfair. And then for us to determine that this system of paying bounties upon the productions of other portions of the State shall continue forever, I, for one, never would consent to it. I doubt very much, sir, the propriety of the State's owning any of the canals. I hold it as a principle that the State should not engage in any mercantile business; that the government was not instituted for that purpose. If it is right for the State to engage in one kind of business, then, on the same principle, it is right to engage in all kinds. The same argument which says the State can carry on the canals would say that the State could build railroads within its territory and run those railroads for the benefit of the State. Do they not add to the prosperity of the State? They are in that respect the same as the canals. If the argument is good for the canals it is equally as good for the railroads. I hold, sir, that the State should only own so much public property as is necessary to carry on the State government. I believe that to be the true doctrine. Let individuals take care of the carrying trade under proper regulations. Let them carry on railroads, manufactures, and other kinds of business; the State should not engage in it. For one I have no doubt that the proposition of the gentleman from Westchester [Mr. Greeley] is correct; and I believe the people ought to determine that the canals of this State should be sold under proper restrictions. Under the present state of things I have no doubt that it would add to the prosperity of the State. It would prevent many of the corruptions which now exist. It would foster trade, it would reduce the rate of transportation and redound to the interests of commerce more than the system as at present carried on. I do not believe that the people of this State at the present time are prepared to sell their canals; but, in my judgment, the day will arrive when they will be prepared to dispose of them and place them in private hands; the day will arrive when they will come to the conclusion that it is unwise for the State to engage either in mercantile business or in the business of transportation; that it is much better to leave it to individuals. I hope, therefore, that this article will be left in such a condition as that the Legislature may enable the people of this State to dispose of these canals if they shall deem it expedient, believing this to be for the best interests of the community.

Mr. WAKEMAN—This question seems to be of such importance that three gentlemen have

spoken in favor of the State making sale of her canals. I did not, sir, intend to take any part in this discussion of the subject of finance or of the canals. I live in a county whose soil is not moistened by any canal. I reside in a county where we do not ship or receive goods by canal; but yet, sir, I reside in the county that is a canal county—which is benefited by the canals of this State. Why, sir, after the close of the Erie canal, we pay fifty per cent more for transportation of goods on the Central railroad than we do during the summer time when the canal is in operation; and the result would be, sir, if we should sell the canals, that we would have the privilege of not only paying fifty per cent more the year round but the probability is one hundred per cent more in consequence of that sale. The competing railroads in this State could well afford to buy the Erie canal and they will do it the first opportunity they have for making the purchase; so that we would be absolutely under the control of the railroads. And although we do not, in Genesee, reside in what might be called a canal county, our county has been benefited by the canals. I remember, sir, when there was a little excitement in our village when wheat raised in price to 50 cents per bushel, when a wide tired wagon, loaded in Albany with goods that went through to Buffalo for the use and consumption of the people of that portion of the State. I know that the farms in that portion of the State are now worth in the neighborhood of one hundred dollars an acre; and now, sir, when our portion of the State has become prosperous to a certain extent by reason of the Erie canal and the lateral canals, shall we now turn around and say we will dispose of the canals, or any part of them? Why, if we were disposed to be selfish along the line of the Erie canal, we might be willing to dispose of the lateral canals. But would this be right, sir? Has not this great State something more to do than to be running the canals for a mere speculation, or a mere calculation of cost and expense? Are there not certain duties that we owe to other portions of this State? Suppose in some portions of this State the lateral canals do not pay; does not the State owe something to that portion of the State in which a canal is located? Would it be right and proper to sell and dispose of that canal? Why, we might just about as well say that a father, who is about to sit down and make his last will and testament, should say to his invalid child that he will cut him off because, by reason of sickness and misfortune, that child has not been able to earn any thing for him during his lifetime. Why, rather the father should be extremely careful to stand by that invalid child, and make provision for his support after the parent has passed away. Certainly the canals of this State are the children of this State, and I trust this State will protect and defend these canals, although they may not pay anything into the treasury of the State all the time, so that we derive revenue above their expenses. But I hope, sir, in holding the canals as the property of the State forever, that we will be careful to place men in charge of them who will honestly administer and protect the interests of the State. Let us not for a single mo-

ment entertain the proposition to sell or lease the canals, but let us hold them as the property of the State forever, and call upon the State to defend and protect that property, whether it pays or not, as a great system of internal improvements, for the protection of the people. It is the only barrier we have in the State against railroad monopolies. Therefore I say, stand by the people of the State in this Convention, as the people will stand by us here if we stand by the canals. I have no fear, sir, whatever, that this proposition will prevail; but I think there is importance enough in it to require us to enter our protest here on the threshold.

Mr. BICKFORD—I wish to say a word in relation to these two propositions. First, in regard to the amendment proposed by the gentleman from Sullivan [Mr. Wales]. He proposes to sell all the canals that do not pay (if I remember rightly) the cost of superintendence and repairs. Now, sir, let us see what that proposition amounts to. Here is the Black river canal and the Erie canal feeder. The Black river is a part of the canal, declared to be so by the Constitution of 1846. Now, that system known as the Black River canal and Erie canal feeder may not pay the cost of superintendence and repairs, and would be sold under the proposition of the gentleman from Sullivan [Mr. Wales] if it prevailed. But what would the State do for a feeder for the Erie canal? That canal is indispensable as a feeder. Another idea in connection with that. They might take all the water which the Black river furnishes, its entire volume, which they do in a dry season, for the Erie canal. The State has constructed a large system of reservoirs on the head waters of the Moose river and the Black river that they may return to the rivers in the dry season the waters extracted for the purpose of filling the Erie canal. What is to become of that system? The people down the river claim that the water shall be restored and that their water-privileges may not be utterly destroyed. What is to become of that system? If the canal is sold, who is to maintain the quantity of water in the Black river? The whole county of Jefferson would be robbed of the water that belongs to it, merely because a soulless corporation or a private individual has bought the canal and conducts it purely on the principle of economy. Now, if the general proposition of the gentleman from Westchester [Mr. Greeley] is to prevail, he would sell not only the ditches called canals, but the rivers and the lakes that are part of the canal system. And why not extend it to the Hudson river, and sell that? It is really a part of the canal system of the State. The Hudson river is just as much as the Black river improvement or the Cayuga river, or the Seneca lake, a part of that system. Why not sell the Hudson river and all the advantages that arise from that? There is just as much reason in it as in the plan the gentleman has offered. Why, sir, it is so preposterous, it seems to me, that the wonder is that the gentleman from Westchester [Mr. Greeley] should have offered it.

The question was put on the amendment of Mr. Wales, and declared lost.

The question recurred on the amendment of Mr. Greeley.

Mr. GREELEY—Allow me to say a word. The gentleman from Erie [Mr. Verplanck] complains that I have thrust this question upon the Convention. Why, sir, I am very willing to leave the subject out of the Constitution; but here I find a section reported by the committee, which reads: "The Legislature shall not sell, lease, or otherwise dispose of any of the canals of the State; but they shall remain the property of the State, and under its management *forever*." Thus, I am compelled to vote on this subject, one way or the other. I am opposed to this section. I am opposed to tying up the hands of the people for twenty years or more. I ask that they be left at liberty to decide, whenever they shall see fit, whether they shall use and enjoy their own property one way or another. The gentlemen who thrust this question upon us would compel us here to insert in our fundamental law, a restriction the like of which is not to be found in any similar instrument on earth. I object to the tone in which gentlemen talk of the canals, as if they were paupers, as if these were "burdens" to be carried by the State. They are no such thing. They are capable, in my judgment, if earning three or four millions per annum above the cost of repairs and superintendence, if there be no stealing. We talk as if they were something to be carried as burdens. They are a great and valuable property, and destined to grow more valuable if fairly treated. Well, says one gentleman, what if some one should buy them and shut them up? Well, if some one should buy the Erie canal and shut it up, and should buy the Mississippi river and shut that up, I do not know what would become of us. But so long as the Mississippi remains open, it will be impossible to create a monopoly of transporting Western produce by shutting up these canals. There are other public works, beside the great Mississippi river, which transports to-day a very large portion of all the produce of the West, and will transport more and more of it, as arrangements are perfected for carrying grain on the river and transshipping it at New Orleans, as there ought to be and will be. It is idle to talk of shutting up the canals. But one gentleman says, "Suppose the buyers should raise the price of freight?" By my proposition, we restrict them from raising *the tolls* a fraction, and they must keep the canals open for transportation by boats at least six months in every year—*our* boats; every one's boats. If they are not so open for navigation, the buyer of them will have to pay a penalty to the State for their default. Then I propose to let the people say what shall be done. Suppose the best offer we can get is forty millions of dollars; I insist that we have a right to ask the people to say whether they will accept that amount for the franchise of the canals or not—to vote whether they will take it or not take it. I have heard so much said about the people by gentlemen—that "they do not fear the people," that "the people know their own interests," etc.—yet when we come to ask those gentlemen to let the people have, for once, a voice on this question, they practically say the people shall never have any voice in the matter. No matter if new light should break in upon them, no matter how cir-

cumstances may change, they shall in no case sell the canals, but must keep them forever, although they should run us in debt by bad management although we should be taxed day by day—we must keep them, still keep them. The gentleman from Rensselaer [Mr. M. I. Townsend] says that some one once proposed to pay four hundred millions to rebels for their slaves. That is just contrary to the truth. I suggested privately to President Lincoln that he might wisely offer to close our civil war, when things looked gloomy, by paying four hundred millions as compensation to the *loyal* slave-owners in the slave States—not as compensation to the rebels, but as compensation to the *loyal* slave-holders of *all* the slave States—for their slaves, they being emancipated. I never proposed to pay rebels. I never believed that we owed them anything, for they forfeited every claim by the fact of rebellion. But the loyal men of the South stood on a different footing.

Mr. M. I. TOWNSEND—I wish to ask the gentleman from Westchester [Mr. Greeley] if, on a review of that proposition, anybody but himself could find a limitation to loyal slave-holders in the disposition of that money.

Mr. GREELEY—Yes, sir; right on the face of it, it proposed payment to *loyal* slaveholders for their slaves.

Mr. BECKWITH—Suppose we should sell the canals for forty millions, what would we do with the forty millions?

Mr. GREELEY—Pay our State debts, and stop the taxes now levied to meet them—three mills on the dollar as one item. We owe enough, I think, to absorb it all. Our total debt could, I believe, be paid with the proceeds of the canals—at all events, with those of the canals and salt works, if the gentleman from Onondaga [Mr. Alvord] will allow me.

Mr. ALVORD—The gentleman from Onondaga will not allow it. [Laughter]

Mr. AXTELL—The gentleman from Westchester [Mr. Greeley] referred to the sale, by Pennsylvania, of her canals, but he was very unfortunate in that illustration. The people of that State are to-day groaning under the fact that their canals are disposed of, in following the class of political economists to which the gentleman from Westchester [Mr. Greeley] belongs; and the people of this State are paying hundreds of thousands of dollars increased tolls, as the result of that sort of political economy. If it were in order I would move an amendment that I think quite as wise as the proposition of the gentleman—that the State provide for the filling up of Lake Champlain and the Hudson river.

Mr. GREELEY—The Governor of Pennsylvania (Gov. Curtin), elected twice by large majorities, sat here a few days ago, and he told me that the State of Pennsylvania would not take back her canals if they were offered to her for nothing, that they were doing twice the business they ever did when under State authority, and that, within the last seven years, by means of selling these canals and otherwise, the State of Pennsylvania has reduced her debt from forty millions to twenty millions, notwithstanding the

heavy expenses of the war; and that when her claim against the government of the United States is paid then she will be able to reduce her debt still further; but I rest on the fact that she now owes twenty millions less debt than when the war was commenced.

Mr. AXTELL—Did the Governor of Pennsylvania tell the gentleman from Westchester how much more the people pay for tolls than they did before, on the canals that are connected with canals which come into this State, and which our people have to use? The people of this State pay hundreds of thousands of dollars every year as the result of the sale of Pennsylvania canals.

Mr. GREELEY—I do not see how it affects the question, so long as we restrict the purchasers of our canals from raising the tolls above the present rates. If double tolls are charged somewhere else how would that affect us here?

Mr. BICKFORD—I would like to ask the gentleman from Westchester [Mr. Greeley] whether the improved system of Pennsylvania does not consist of railroads and canals combined in the one system owned by the State?

Mr. GREELEY—There were little bits of railroad going over the heights of the Alleghany mountains, connecting canals on either side; but the State did not own over fifty miles—certainly not over a hundred miles of railroad.

Mr. BECKWITH—I think the Convention are not prepared to vote for the proposition of the gentleman from Westchester [Mr. Greeley]. The policy of this State has been to promote internal improvements. I would like to know if any gentleman can name to me a government in all the world that has not, to some extent at least, been engaged in internal improvements of the character of the canals of this State; and whether that is not proper? I would ask whether this State should give up all internal improvements, and abandon them to individual enterprise? If so sir, I think it would be found that this is the first government that has ever done such an act. Now, sir, I think also that it would be foolish to attempt to sell any one of the canals because it does not pay. They are part of our system, and it is perfectly evident, from the statistics laid before us, that these canals will eventually pay for themselves; and, when paid for, I shall be in favor of throwing open the navigation of these canals by a reduction of the tolls, so that no more shall be charged than is necessary to keep them in repair. Then I think the interests of the people of the State will be served. Suppose that some of the lateral canals do not pay these expenses, still the canals, as a whole system, will pay, and the tolls, when the debt comes to be paid, can be greatly reduced, and thereby the commerce of the State promoted. I think that is a wise policy. I think it is the policy we should pursue; to get the canals in a condition, by the payment of the debts they now owe, where the tolls may be reduced, and the commerce of the State carried on with very little expense. If we do not adopt this course, and the canals are sold to individuals, they will be probably bought up by the competing railroads, because no one would be able to buy up the Erie canal except the railroad corporations; and when they do this and get the control, they

will possess a power over the Legislature, in my judgment, which will enable them to come before it and insist that they shall be permitted to charge freight to such an extent that it will cost the people of this State a great deal more than if the canals remained in the hands of the people. Suppose your canals are sold to the New York Central railroad, and that the New York and Erie railroad is combined with the Central, will they not possess a political power, by sending men to the Legislature, and, by their influence over the Legislature, so to control the legislation of this State as to procure the passage of any act that will favor the increase of tolls?

Mr. GREELEY—Changing the Constitution?

Mr. BECKWITH—Yes, sir; limit their power to increase the tolls, and they will, I have no doubt, be able to procure a change of the Constitution by amendment. Get the Legislature to propose an amendment and have it passed. Why, sir, what is the great power against which the Legislature is called to stand up? It is the railroad power. That is greater than any other in this State. Let it all be combined, and give them the Erie canal, and all the political power of the State is in the hands of these men. They would control the Legislature—control the State. I hope that day will never arrive. On the contrary, I hope the State will continue to own the canals, and when they have paid up their debt, reduce the tolls, and keep the power in their own hands, so that they may prevent this creation of a great political power that might, to say the least, operate injuriously.

Mr. HATCH—I do not rise for the purpose of detaining the committee, but I want to present some views briefly on the subject under consideration. There has been a great deal of talk in the Convention about the Pennsylvania canal; the importance of it. The gentlemen forget that the Pennsylvania canal only, in fact, goes to the Alleghany mountains, and there requires in its transportation, portage, which destroys the usefulness of that canal to the people of that State. The Kanawha canal in Virginia, inaugurated under the statesmanship of Washington, had to encounter the unsurmountable obstacles of the Alleghany mountains, and proved a failure. The commercial supremacy of the Erie canal is in its gateway of inland commerce through the Alleghany mountains and the Hudson. It is the key of the inland commerce of this country. Now, the gentleman from Westchester [Mr. Greeley] says, you can sell the Erie canal for forty millions of money. If that gentleman will examine carefully the statistics of canals and of railroad transportation, he will find in economy of transportation by canals that there is an annual saving to the people of the State of New York—I mean the laboring classes—of eight millions annually; or of forty millions of money every five years. I want these facts to go to the people of this State, with the proposition of the gentleman to sell their canals. That is all I want to say.

Mr. CLINTON—This is really, I suppose, hardly a matter for discussion. These canals are one, and they cannot be separated. They are a part of a great system. These canals, it is conceded on all hands, are a richly productive property of

the State. For mere pecuniary motives, then, we should keep them, and let the Legislature say hereafter what they will do for them, for the great benefit of commerce. Then, sir, the canals of this State work a great benefit, which has not been enough dilated upon, and on which I shall not dilate now; they cheapen our bread; they cheapen the bread of the poor man. Mr. Chairman, they are the glory of the State of New York, and I thank God she stands pre-eminent among her sister States, not only as the founder of a great system of public improvements, but as full owner, as a strong instance of her greatness and of her magnanimity, which has been so justly praised by the gentleman from Westchester [Mr. Greeley]. Mr. Chairman, I respect the people of the State of New York too much to go to them, I dare not go to them and ask them, will you sell this glorious heritage, your birthright, for a mess of pottage?—no, not for a mess of pottage, but to gratify the whim of gentlemen who have got some fanciful notions about the proper boundaries of State government.

Mr. LEE—I did not propose to say anything on this question, nor do I now design to say but a few words. I suppose that this question will be settled on the principle of expediency. If it is deemed wise to sell the canals of the State, I have no doubt this committee will take action in harmony with that view. If they consider, on the other hand, that it is inexpedient, they will decide against the proposition. I have no doubt they will so decide. The gentleman from Westchester [Mr. Greeley] admits that the revenues of the canals will bring in from three to four millions annually. If the State possesses an investment that will yield an annual revenue of from three to four millions of dollars, as by the confession of the gentleman who has introduced the proposition to sell the canals, it certainly seems strange to me that any such proposition could be seriously entertained by the committee, or even by the gentleman himself. Nor is that all, sir. He admits that the prosperity of the canals, in his judgment, has not yet culminated. They are still to become more useful to the citizens of this State and of the West, and to add increased revenues to the treasury of the State. Then why sell them? But there is another reason, sir, why I should be opposed to their sale. The canals of the State, in addition to the development of the State which they have made, adding hundreds of millions of property to the assessed valuation of the property of the State, are to-day the poor man's railroad. The poor man can put his produce on his boat and go to market and reap the benefit. I need not institute a comparison as to the cheapness or costliness between canals and railroads. It has already been done. It is almost self-evident. I think, sir, it would be a sad day for the interests of the people of this State to say that the canals should be sold and go into the hands of a private corporation. They would be necessarily under the management of a private corporation, conducted for its own interests, and lead to the imposition of vastly increased tolls and charges for freight. But I desire not so particularly to speak to the general question as to call attention to one

of the canals sometimes denominated lateral canals. It seems that what are denominated lateral canals are in very poor odor with gentlemen on this floor. The Oswego canal is called a lateral canal, and I notice it has had but few friends upon this floor in the discussion of this question. The bare mention of it, generally, is ignored. I admit it is a small canal, only thirty-eight miles long. But, sir, it is connected with the lowest of those great Mediterranean seas that stretch out to the West and North-west. It lies at the gate of commerce, on the shortest line between these great Mediterranean seas and tide-waters. It lies in the line which, had the indications of Providence in this regard been respected, the original canals would have followed—commencing at the mouth of the Oswego river, following the original channel of intercommunication by boats before the construction of canals, up the Oswego river, the Oneida river, through the Oneida lake, Wood creek and down the Mohawk valley—the shortest and most feasible route, and the cheapest. But, sir, in 1846, when the wisdom of the State was collected here for the purpose of amending the Constitution, these sages very wisely decided, after a full investigation of the subject, to provide for the enlargement of the Erie canal and for the completion of the Black River and Genesee Valley canal—ignoring entirely and failing to discover the advantage it would have been to the State to have made the necessary provision for the enlargement of the Oswego canal. In the language of the Constitution, article 7, section 3, we find:

“And the remainder of the revenues of the said canals shall, in each fiscal year, be applied in such manner as the Legislature shall direct to the completion of the ‘Erie canal enlargement,’ and the ‘Genesee Valley,’ and Black River canals until the said canals shall be completed.”

The following year there was introduced into the Legislature of this State, a bill which was finally enacted as law, which provided for enlarging, under certain circumstances and conditions, the locks on the Oswego canal:

“But in no event shall all such locks be enlarged until one tier of enlarged locks on the Erie canal shall be completed from Syracuse to Buffalo, nor shall any of the locks upon the Oswego canal be rebuilt until such rebuilding shall be rendered necessary by the failure of those now in use.”

What was the motive of those who framed that law, I need not stop to examine; but we find the Oswego canal excluded from the Constitution; we find by the passage of this law, a padlock was put upon its commerce until every lock from Syracuse to Buffalo should be enlarged. Subsequently to this, on two different occasions, the minds of the people of this State were agitated for the purpose of discriminating the imposition of tolls, by charging the same tolls for thirty-eight miles on freight on the Oswego canal as was charged from Buffalo to Syracuse, one hundred and eighty-six miles under pretense of protecting the revenues of the State. A strenuous effort was twice made. The appeals failed. And what has been the result of all this? According to the statement made by the auditor, in response to a resolution passed by this Convention, asking for infor-

nation, the Oswego canal has paid its entire cost of construction, its entire cost of enlargement, and the cost of its maintenance, with interest thereon: and, over and above this, it has paid the treasury of your State \$2,950,448; an annual revenue, over and above cost and expenses of about \$100,000 into the treasury of the State. Now, I ask, Mr. Chairman and gentlemen of the committee, whether, if the Oswego canal be a lateral canal, it would be advisable to dispose of it? I apprehend that what I have said in relation to the Oswego canal applies to a greater or less degree to all the lateral canals, properly so called; and I cannot for a moment entertain the idea that any considerable number of gentlemen upon this floor who desire to promote the interests of this State and protect the people of this State, will vote for the proposition of the gentleman from Westchester.

Mr. S. TOWNSEND—I would like to ask the gentleman from Westchester [Mr. Greeley], or the Chairman, whether the point of his amendment is not to leave it to the vote of the people, whether they will sell the canals or not?

The CHAIRMAN—It is so.

Mr. LEE—I wish to add that the Oswego canal, treated as a step-child from its very origin up to the present time, has nevertheless paid, as I have already said, the cost of construction, enlargement and repairs, and has also paid about \$3,000,000 into the treasury of the State, which is about thirty per cent more than the Erie canal has ever done.

Mr. S. TOWNSEND—I merely wish to say, sir, that I concur fully with what the gentleman from Oswego [Mr. Lee] has said in reference to the unfair treatment which the Oswego canal received at the hands of the Convention of 1846, and I also wish to bear testimony, that one individual at least from the southern part of the State took the part of that canal at that time. At that period of the discussion, it had become rather the prevailing habit, to denounce the delegation from the city of New York, as being apathetical, and not sustaining the public improvements, but rather following in the lead of the gentleman from Herkimer, Michael Hoffman. I, sir, took occasion then to say, that delegation could not be accused of any want of proper sympathy with the canal interest, when they stood up in favor of an appropriation which contemplated an expenditure of \$12,000,000 or \$15,000,000. Why, sir, so far as the mere connection with the great West was concerned, I remarked that they could secure all their objects by an improvement of the navigation of the Onondaga river, the Onondaga lake and the Oswego river and canal. I think it had some effect in silencing that tone of remark for the moment, and indeed forever in that Convention. Because it was very obvious, that the city of New York could maintain its connection with the great regions of the West by means of the Welland canal, just as well as through the Erie via Buffalo, but we chose to put in the larger appropriation and go the other way. Gentleman may say, then you would have to go into a foreign country to use their means of communication. In answer to that I will relate an anecdote of Governor S. Las

Wright, which will cover that objection. While he was Governor he paid a visit to Canada, to see some of the public works there, and went, as he supposed, *incog.*, but he noticed that they treated him with great politeness and were very particular in showing him all that could be seen, and at the conclusion he thought it was no more than proper that he acknowledge the politeness shown to him. The polite Canadian replied, saying, "Governor, we have been very particular in showing these things to you, for we know that one of these days they will be yours." I take it, that no man on this floor doubts that if any sufficient reason should ever arise for our taking possession of these canals, we will do so. When we have completed our locks on the Erie canal, and made some needed improvements by giving it its full working power, all that is needed is honesty in the management of the canals generally, and their finances particularly, and proper attention to their condition; as the old expression used to be—I have not heard it much lately, "We need a proper bottoming out of the canals," even this involved large appropriations. But the improvements now indicated by the gentleman from Onondaga [Mr. Alvord], taking out the bench-walls as they are called, will involve a much larger expense. Even by direct taxation if necessary, I would be willing, with proper and judicious management, to raise money to well sustain the canals. The gentleman from Rockland [Mr. Couger] showed us yesterday how we had gone into taxation for this purpose, until finally I believe last year \$3,000,000 was taken directly from the people of the State. I know that it was large, but I had not supposed that amount of taxation had been reached by the Legislature. I thought the average for a series of years was something like a million of dollars, which would not amount to any very great burden, that men should hesitate about. Now, sir, in reference to the immediate question of taking out that restriction in the Constitution, which I do not consider a wise one, of inhibiting the State in the matter of selling the canals, I think I should favor it; I should certainly favor the submission of that to the people as a distinct question, and allow them to decide upon it, and I certainly should favor the idea that they should have the right to say whether the canals should be held forever. I should like to see that word "forever" stricken out at any rate; it is a very presumptuous word in that connection. It occurs twice in the Constitution of 1846. They said then "forever," and yet here, in twenty years after, we contemplate having no regard to it all, and are discussing the question of annihilating and extinguishing the whole section. Again, this is, to my view, and I trust to the view of the members of this Convention, a very deep and important question, and involves the principles of taxation, and the best use of the public and the private property of the State. There is a great deal of force in what was said by the gentleman from Westchester [Mr. Greeley], and also by my friend, and colleague of 1846, the gentleman from Kings [Mr. Benson], that as a general rule an individual can attend to business matters better than a county or State government can. Then, again, in the discussion,

so far as it has gone forward, we have lost sight of the fact that the value of this property is of much greater extent than forty millions—yea, a hundred millions, I might safely say. But even if sold, the availability of this canal property is not lost to the State in the elemental sense—in the sense of taxation. We must remember that this property does not contribute to our assessment roll a single dollar, or to the ratio of taxation, and I fear before we grapple successfully with the financial difficulties we are embarrassed with, from the various sources alluded to, that the State taxation will rise to nearly two per cent, or twenty mills, and instead of eight mills now proposed. Any gentleman will understand that on the basis of one hundred millions as the value of our canals, either leased or sold, the element of taxation would come in as a most serviceable relief. I will ask the gentleman from Westchester [Mr. Greeley] whether he distinctly understood the Governor of Pennsylvania to give him to understand that the general settled opinion, or, in other words, the solid opinion of the State of Pennsylvania was favorable to the sale of their canals?

Mr. GREELEY—Governor Curtin, from Pennsylvania, assured me there was a very general assent by the people of Pennsylvania that they had largely profited in every way by the sale of the canals, and the proof of it was the fact that their debt had been largely reduced in the last seven years, from forty millions to twenty millions.

Mr. S. TOWNSEND—There is a great deal of force in the circumstance alluded to by the gentleman from Erie [Mr. Hatch] in reference to that system of improvements, where it had to encounter more abrupt and precipitous grades than there is after the spurs of the Alleghenies have terminated in the plateaus of our own State, where the canal traverses the grades even the railroad permit to run. Yet, sir, I think the fact stated, and corroborated by such authority as the gentleman from Westchester gives, it being fresh in his memory, is a very important one to affect the decision of this committee, though I do not suppose that this committee are now prepared to decide to propose this question separately. But certainly I think we should go before the people of this State for their unbiased deliberation upon this question. There is undoubtedly an economical question to be considered in reference to what some gentleman has called these "lateral" canals. So far as they constitute an essential element in the successful conduct of our canal system, they present a principle which the Convention must recognize. The Black River canal has always been considered mainly useful as a feeder to the Erie canal. In regard to these feeders, it is an engineering question and a question of detail more appropriate to the Legislature than to this body. And I will say *en passant* that we have committed a great error in not seeking to secure those great general points which a Constitutional Convention should endeavor to lay before the people rather than to go, as we often have, into matters of detail more properly belonging to the Legislature.

The question was put on the amendment of Mr. Greeley, and, on a division, it was declared lost, by a vote of 6 in the affirmative, the noes not being counted.

Mr. S. TOWNSEND moved to strike out the word "forever."

The question was put on the motion of Mr. S. Townsend, and declared lost.

Mr. RUMSEY—I move to amend by inserting after the word "canals" the words "salt springs," and to add at the end of the section the words "and the aggregate quantity of land connected with the salt springs shall not be diminished."

Mr. CHURCH—The committee did not insert any such provision in relation to the salt springs for the reason that there is a separate and independent committee on that subject, which has yet to be considered.

Mr. ALVORD—Although I am in favor of the proposition of the gentlemen from Steuben [Mr. Rumsey], I hope he will withdraw it, out of courtesy to the standing committee who have that subject in charge.

Mr. RUMSEY withdrew his amendment.

Mr. GREELEY—I move to strike out the words "forever" and insert "until the people shall otherwise decide."

Mr. S. TOWNSEND—By a vote?

Mr. GREELEY—Certainly, by a vote.

The question was put on the amendment of Mr. Greeley, and it was declared lost.

The question was then put on the adoption of section 9, and it was declared carried.

The SECRETARY read section 10, as follows:

Sec. 10. No moneys shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law, nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated and the objects to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum.

Mr. BICKFORD—I move to strike out from the fourth and fifth lines the words "unless such payment be made within two years next after the passage of such appropriation act." Sometimes a payment is not made, but the work is done for which the payment is to be made, and then you have to get a new appropriation act passed for it. This is wholly useless. It creates a class of legislation which there is really no need for at all; and I hope these words will be stricken out.

The question was put on the motion of Mr. Bickford, and declared lost.

The question recurred on the adoption of section 10, and it was declared adopted.

The SECRETARY read section 11, as follows:

Sec. 11. Neither the credit, money or property of the State shall in any manner be given or loaned to or in aid of any individual, association or corporation.

Mr. E. BROOKS—Mr. Chairman, we have now reached one of the most important sections reported by the Committee on Finance, and as, in

the order of business, the next article to be considered is that which relates to charities and charitable institutions, I think it but right that this section should be postponed until the article reported by the Committee on Charities shall be before us. I make this suggestion for two reasons: first, because if we now enter upon the discussion of this subject it will necessarily occupy considerable time, but mainly because, when the article reported by the Committee on Charities is under consideration, I think that committee will be able to give the Convention such reasons for modifying this provision as will be assented to by the Convention. This article is a great change from the Constitution of 1846, or in that which is meant to be a corresponding provision to the Constitution of 1846, by the addition of the words "money or property," and the insertion of the word "neither," so that no "money" or "property" can hereafter be granted for charities. I do not desire to enter upon the discussion at this time, and therefore move that this section be postponed until the article referred to by the Committee on Charities and Charitable Institutions shall be acted upon.

Mr. CHURCH—So far as the discussion of the question in relation to charities is concerned, I think it is eminently proper that it should be postponed until the article proposed by the Committee on Charities is under consideration. But the embarrassment in relation to the matter is this: this section containing only two lines and a half, is, as the gentleman has said, very far reaching and very important. Not only does it cut off all appropriations to miscellaneous charities, but it cuts off all appropriations to railroads of the money of the State, or to any other corporation, or person, for any object or purpose whatever. It contains the proposition that the State shall not give away its money or property, and I consider, with my friend from Richmond [Mr. E. Brooks], that it is a very important provision. Now, I would suggest, for the purpose of leaving the other questions involved in this section to be discussed by the committee and disposed of, that we add at the end of section 11, these words: "except as is otherwise provided in this Constitution." Then, if it is otherwise provided, why of course it is not involved here. Will that be satisfactory?

Mr. E. BROOKS—I wish to say to my friend that, after this Convention has been in session one hundred days and more, I am a little distrustful of the future. I see all around me signs of great impatience, a disposition to leave the business in some measure unfinished, and I should feel extremely mortified, for one, especially as chairman of the Committee on Charities and Charitable Institutions, if a provision like this one before us, should become a part of the fundamental law of the State, and the committee of which I am chairman should fail to have an opportunity to have its report acted upon. The gentleman will readily perceive that, if such a provision as he suggests is incorporated in the article, and the Convention should fail to act on the report of the Committee on Charities, his provision would be binding, and there would be no power in the Legislature to make any appropriation for the charities of the State.

Mr. CHURCH—Will the gentleman allow me to suggest a difficulty? If we pass over this section entirely, and the article in relation to charities should be adopted in any form whatever, it will still be necessary to go back to this section and discuss all other questions involved in it before the committee or in Convention. Therefore, it seems to me we ought to dispose of these other questions now.

Mr. E. BROOKS—That is very likely to be so; and, therefore, in self-defense, in regard to what I deem one of the most important subjects before the Convention, I will withdraw the motion which I have made, and propose to insert at the end of section 11, these words:

"Provided that this article shall not apply to appropriations for dispensaries, orphan asylums or any of the incorporated charities of the State."

I will say in regard to literary institutions—for I wish to distinguish between the two—that there is a Committee on Education in this body, which I presume will take care of them. I think the public mind has been very greatly abused by a class of memorials emanating from the city of New York and offered by an association political in its character. These memorials have been spread broadcast through the State, they are in reference to what are called "sectarian charities"—a designation I believe to be generally unjust, whether applied to institutions of learning, or to what are more properly called charities. If we are to enter into this discussion now, and it seems almost unavoidable, I desire to state at the outset that I shall try to discriminate, as much as any other gentleman, between what are called private and public charities. This is, unquestionably, a broad distinction which gentlemen ought to make. I desire to realize, too, the responsibility, in contrast, which gentlemen occupy as representatives of the State, and their positions as citizens of the State. Charities, however, demand the consideration both of the State and of individuals; and if, therefore, this amendment should prevail which I have suggested, it will cover the main provision to which I wish to call the attention of the committee. Now, sir, as a financial question, I appreciate the position of the chairman of the Committee on Finances. He seems to stand at the vaults of the State finances (and very properly) to protect the State treasury from all innovations, and to protect the credit and character of the State in regard to its financial duties. I appreciate the importance of his position. But I hope this Convention is not to be moved from its duty in regard to public questions of this character by any appeals of this sort. Sir, I know what State taxes are, I realize their magnitude. Imposing a tax of \$12,800,000, or nearly \$13,000,000 a year upon the people for State purposes alone is unquestionably a great burden. But I have taken the pains to go to the auditor's office to find out what proportion these taxes for charity bear to the general expenses of the State; and when I tell you, Mr. Chairman, that for all kinds of institutions (and I mean such institutions as those for the deaf and dumb, the blind asylum, the idiotic and insane asylums, and institutions of that character), the average appropriation for the last twenty years has not

been more than \$345,000 a year, I think gentlemen will see in these figures no such abuse of power as has been intimated over and over again in this Convention; or, as is charged in the memorials presented for our consideration. And if we subtract from this \$345,000 the amount appropriated for dispensaries, orphan asylums, and the hospitals of the State, I find the sum appropriated for this class of charities, taking the average for the last twenty years, amounts to only one thirty-second part of a mill. This, sir, is all we have expended, taking year by year, for twenty years past; one thirty-second part of a mill expended for the three classes of charities I have named; and one-fifth of a mill covers all the appropriations for institutions of learning, except the established common schools and colleges. The State charities, as they are called, hospitals, dispensaries, and orphan asylums included, have received no more than the sums named. Now, while we are imposing a State tax of twelve or thirteen millions of dollars for State purposes—amounting this year to, perhaps, more than ever before—I submit that even the whole amount is a very small demand upon the State for the objects named, and the good done. In regard to the memorials which have been presented to this body, let me also say that not one of them has asked for any such provision as is embodied in the section under consideration. All that the petitioners have requested, is that the State appropriations shall not be made for sectarian charities. We have had two reports before us, one from the Committee on the Powers and Duties of the Legislature, and one from the Committee on Finance, the former one reaching beyond the latter, proposing to tax all institutions of learning in the State, as well as all institutions not immediately under the control of the State, with the exception of the free college of New York which is supported entirely by a tax imposed upon the people of the city of New York. There is another fact, and a very important one, to which I wish to call the attention of the Convention. We have a population in the State supposed to amount to four millions of people, and one-eighteenth part of these people, according to our Manuals and other information, are a pauper population. What do you intend to do with these people? Do you suppose it possible to support one-eighteenth of the people of this State, who are paupers (some made paupers by your own laws) by the private charities of the State, by the churches of the State, by the benevolent institutions of the State? It is simply impossible. Well, this pauperism of the State is increasing from day to day, and from year to year, and I realize the fact from examination and study, that just in proportion as you impose heavy taxes upon the people, just in proportion do you increase the pauperism of the country. In the combined government of Great Britain and Wales, there are one-twentieth of the people receiving direct support as paupers, and another one-twentieth receiving support, indirectly as paupers; and in this great and prosperous State one-eighteenth of the people receive the same kind of support. Now, Mr. Chairman, it is not a great burden upon the people to make an appropriation of either one-fifth

of a mill for the whole or one-thirty second part of a mill, for the class I have named, if we must discriminate between classes of deserving charities. This is a very small tax. And let me say that it is made upon the calculation that the assessed property of this State amounts to \$1,600,000,000, which with any proper valuation of State property, would nearly if not quite double the amount, and in this proportion decrease the percentage of taxation. Certain, I am also that there is no tax more willingly paid by the great body of intelligent people, by the great body of wealthy people, or by the middling class of people, who have neither great poverty nor great riches, than this incidental tax for the charities of the State. And we also know that a large proportion of the property of the people, owned by the tax payers in this State, is not taxed at all; I mean all the federal bonds, upon which specie is paid semi-annually at the rate of five or six per cent per annum. By an act of the United States government, no tax is imposed upon this kind of personal property, and it is therefore to be considered in making a calculation of what the burdens of the people are, least so much property escapes all taxation. It amounts, for the entire people, to nearly two thousand millions of dollars, and a large share of these bonds are owned in this State. Now, sir, we have been discussing the canal question for some time. And in regard to them, gentlemen very well know the people have paid in tolls a sum in years past, as shown by the Manual, of over \$100,000,000, and \$92,000,000 of it is the legal interest on the tolls since 1817. We also expended originally for these canals a sum amounting to more than \$47,000,000, the interest upon which amounts to nearly \$70,000,000. Well, this is a part of our commercial regulations, and it is the duty of the State to take care of all its material interest, and to do that for the people at large which shall result in the greatest good to the greatest numbers; and if my friend, the chairman of the Committee on Finance [Mr. Church] is sincere in what he says (and I have no doubt he is), especially in what he said last night, that the purpose of government is to protect the lives, the liberties, and the property of the people, then I hold him to the duty of making provision for the poor of the State who are unable to take care of themselves. We are but performing a necessary part of the duties of government, in providing for their lives, their liberties, their safety and their happiness. We are protecting ourselves, also, in taking care of them. Something was said last night, about what the purposes of government were, as laid down by Mr. Jefferson. I think the sentiment which guided Thomas Jefferson was "That government is best which is best administered." The same principle in substance was laid down by Jeremy Bentham, years ago, and I think it ought to regulate all Conventions and Legislatures, and all public men, and that is, that we are bound so to act as to secure the happiness of the greatest number of people. Now, Mr. Chairman, I desire to state what we have done, and what the effect is of what we have done, during the last twenty years, in relation to some of the incidental charitable in-

stitutions of the State. I take the New York Prison Association for one. In twenty-two years we have aided, morally, mentally, and otherwise, some 130,108 persons, and that at very little cost to the State—a sum so small as to be hardly worth considering. We have saved the morals, the characters and the lives of a great many people, by the merely incidental benefits we have given, by institutions like these. I wish to say another thing: that in a body like this, composed of men of mature years, and in all legislative bodies composed of men of like character, there never fails to be a willingness to take care of those who are suffering in mature life, while there is an indisposition and indifference, or perhaps a forgetfulness, to take care of the young and helpless. Sir, it is only recently in this State that we have had anything like a foundling hospital; and as I have had occasion to show in the report of the Committee on Charities, the great body of persons relieved in this hospital for infants came from the interior of the State, and did not belong to the place where they found relief. Again, sir, when I first came to this city, fourteen or fifteen years ago, my attention was called to a little building, not very far from this building, in which was the infant existence, if I may so speak, of what is now the idiotic asylum of the State of New York, so well established at present in the city of Syracuse. When I entered that institution in its infancy I found such a vacuity of mind, such an absence of intellect on the part of the young persons—some of them, however, of the age of sixteen to eighteen years—that there was not literally sense enough to take a common-sized stick and put it through the centre of a hoop which would cover the surface of a flour barrel. Yet in the space of a few months I observed that these same children and young persons were able so to concentrate their minds as to be able almost to thread a needle. Sir, I think this, if anything in the world, realizes and answers the sublime idea of the poet when he says:

"Canst thou not minister to a mind diseased,
Pluck from the memory a rooted sorrow,
Raze out the written troubles of the brain,
And with some sweet oblivious antidote
Cleanse the stuff'd bosom of that perilous stuff
Which weighs upon the heart?"

Here the gavel fell, the gentleman's time having expired.

Mr. BECKWITH—I wish to ask the gentleman from Richmond if any of these institutions are sectarian.

Mr. GOULD—Will the gentleman from Richmond [Mr. E. Brooks] have any objection to put the word "unsectarian" in his amendment?

Mr. E. BROOKS—I will answer the gentleman if I am allowed. I think there is no such thing in a true sense and as a general principle as a sectarian charity. If, perchance, the Episcopalians, Methodists or the Roman Catholics have persons belonging to their respective religious churches or societies who are poor and dependent, the fact that they are poor and dependent makes them as much proper objects for the charity of the State as if they held any other relation. And if we are to enter into the consideration of this subject I can demonstrate to this body that what are called the Protestant institutions of the State

have received very largely in excess of what are designated as the Roman Catholic institutions. Sir, when I read the memorials presented in the early part of the session my mind was very much impressed with the idea that sectarian institutions, so-called, were receiving an undue proportion of the public money, but when I went to the figures and examined the appropriations made I found little or no truth in the statements, albeit they had been generally credited in and out of the Convention. Now, sir, wherever you find a suffering child or a suffering man it does not become the people of any party, of any sect or of any faith to inquire to what sect or faith the sufferer belong. If there be a suffering man or a suffering woman or child, in the name of God relieve the suffering without stopping to make any inquiry beyond this fact.

Mr. BECKWITH—I do not wish to express any opinion. I barely desire to know the fact whether any one of those were exclusively under the control of any religious sect.

Mr. E. BROOKS—I can only answer that by illustration. I will take the deaf and dumb institution, of which I have been a director some fourteen years. There is nothing sectarian in its character. Very far from it; and yet the entire directorship of the board, the president of the board, the principal and vice-principal and the teachers are all Protestants. The same is true of nearly every State institution; and while yet I do not regard these as sectarian charities, though many Roman Catholics do regard them in this light, our large charities are nearly all, if not all, under the control of those who are known as Protestants.

Mr. BECKWITH—The gentleman has not understood precisely what I wished. My object is this: I wish not to know under whose control they are, but whether, being under the control of one religious faith, they refuse to accept applicants of a different faith and deprive them of the benefits of their institution. Suppose there is, if you please, a Presbyterian charity, do they exclude Baptists or Roman Catholics or other denominations from the benefit of their institution?

Mr. E. BROOKS—I cannot answer that question satisfactorily. I am not versed sufficiently with the operations of a Catholic institution, but if any Protestant desires to enter these I believe the directors would be willing enough to bestow their charity in that direction. This is what I have been told.

Mr. ALVORD—It seems to me we can come directly to this question without bringing in the incidental matter of the gentleman from Richmond [Mr. E. Brooks]. And for the purpose of following in the footsteps of the illustrious gentlemen who composed the Convention of 1846, and also for the purpose of giving my friend from Oneida [Mr. Kernan] an opportunity to carry out the proposition made by him in his speech last evening, in regard to the moneys which might come into the State treasury, to leave them as they have been left in the past to the disposition of the Legislature, I move to strike out this entire section, and insert section 9 of article 7 of the present Constitution. "The credit

of the State shall not in any manner be given or loaned to or be made to any individual, association or corporation." I trust we have had experience enough in the discussion which has been going in this body since this subject was brought up, to know that the majority of this committee and of this Convention was not in favor of going beyond the strict requirements of the Constitution of 1846. I am for one willing, wherever they have in the past proved fortunate, that they should be continued in the future; but I am for one opposed to the idea of the State of New York, binding herself so clearly that she cannot by any possibility act upon the great interests within the limits of the State, as the exigencies of the occasion may require with the moneys she may have in her treasury. I am, as I said upon the occasion of speaking in reference to a similar question last evening, opposed to the idea of a State running into debt for the purpose of doing everything, no matter what it may be, simply to be recovered from the people by taxation, because of the fact that an embarkation into a matter which is to result in taxation in the end without regarding benefits to the people, is wrong; and for another reason that States, as individuals are apt to run in debt and put off the day of payment, when they would hesitate and pause and oppose in that regard if they are to pay up at the time they undertake to buy or purchase the article. Sir, I am opposed to this for the same reason, if the credit of the State or the bonds of the State are to be given for the purpose of sustaining any enterprise. The past history of this State previous to the Constitution of 1846 was this: if a railroad or some enterprise of that kind was started in any portion of the State, and was unable as it seemed to get along without some State aid the State came in as an indorser or security for the road, loaning to the road or to the corporation its bonds, payable at a future period of time, with an agreement on the part of the corporation to take care of the interest as it became due and ultimately to redeem the principal. The result was in very many instances the State lost the entire amount of the investment. But if the people of the State of New York, expressing their will by the Legislature of the State, shall see fit to give absolutely any money or property to any institution or to any improvement of this kind, which in their judgment shall return to the people of the State a remuneration incidentally for thus giving to this project or object, I am in favor of allowing them the right to do so. I think, therefore, the provision of the Constitution of 1846 in this regard was a wise one. It certainly takes care of the question of the gentleman from Richmond [Mr. E. Brooks]. I am, for one, against—decidedly and unmistakably against—the idea of fostering any charitable institution which is sectarian, not only in its principles, but sectarian in its application of charity to the people. I am not against fostering those institutions which are to a certain extent under sectarian rule and management, as they must be from the necessities of the case, if they open wide their doors without discrimination in that regard to all portions of the people. But there are very many mentioned by the gentleman

that are not at all sectarian, so far as regards the application of their charities. There may be, it is true, in some instances, a government over those institutions proceeding either from individuals or from some congregation of individuals attached to a particular sect. I am prepared to say, so far as regards my knowledge of these matters, that there is not one of these so-called sectarian institutions within the limits of the State of New York where sectarianism goes with the government, but what their doors are opened wide to all. I trust therefore, while we shall leave to the Legislature to choose and discriminate, so far as regards these matters of charity, we shall leave to them the question of determining whether, from time to time, aid shall be given to institutions of this kind.

Mr. MURPHY—The section now under consideration is partly taken from the present Constitution, the ninth section of which provides "That no money or property of the State shall in any manner be given or loaned to or given in aid of any corporation." This subject was pretty fully discussed last evening. I propose, in my action here, to follow out what was then the determination of this committee. I therefore ask the gentleman from Onondaga [Mr. Alvord] to accept, as an amendment to his amendment, section 14 of the present Constitution, somewhat modified, which the Committee on Finances have stricken out. It will, as thus modified, read as follows:

"On the final passage, in either House of the Legislature, of every act which imposes, continues, or revives a tax, or creates a debt or charge against the State, or makes, continues, or revives any appropriation of public or trust money, or property; or leases, discharges, or commutes any claim or demand of the State, the question shall be taken by ayes and noes, which shall be duly entered on the journals, and four-fifths of all the members elected to either House shall, in all such cases, vote in favor thereof."

Mr. ALVORD—I should be entirely in favor of such a proposition. I do not know whether it will properly come into this discussion, but for the purpose of argument I will accept the proposition.

Mr. MURPHY—I was impressed with the remarks of my friend from Oneida [Mr. Kernan] last evening in regard to "log-rolling" in the Legislature. I know that is an evil which does great injury to the State and the public treasury. It is a great evil, but in my mind a much greater evil would be the proposition as it stood last night in connection with this clause, which forbids all freedom of action on the part of the sovereignty of the State to grant subsidies either to public corporations or charitable institutions. I would regulate and control the power of the Legislature in the disposition of the public moneys, so that "log-rolling" may be prevented, and each case of aid left to stand upon its own merits, without reference to the other interests. I think it can be effected by the amendment I have proposed, which is that in all these appropriations, whether for charitable purposes, for colleges, for educational purposes, or for subsidies for public improvements, there shall be a vote of at least four-fifths of both Houses of the Legislature.

MR. CHURCH—Of all the members elected?

MR. MURPHY—Of all the members elected; yes, sir, I will put it as stringent as that. In regard to the charities there will be no difficulty in obtaining, in all proper cases, four-fifths to vote, because we all feel the natural impulses which have been set forth so eloquently by the gentleman from Richmond [Mr. E. Brooks]. We avoid what I think is a very serious objection in the proposition in the report of the gentleman from Richmond. He would give to every man who wants it aid, whatever may be his religion; yet it must be done, according to his proposition, in a particular way. It must be done through certain institutions which he says are not sectarian.

MR. E. BROOKS—Will the gentleman allow me?

MR. MURPHY—Certainly.

MR. E. BROOKS—In the article which the Committee on Charities have reported they have provided for a board; that every institution seeking aid of the State shall, two months prior to the meeting of the Legislature, make application through that board for such aid. If the board regard it as a proper object of charity they shall make application to the Legislature. The effect of this amendment will be to prevent entirely the "log-rolling" to which allusion has been made. Now, if the gentleman will allow me, I will illustrate by an example: A member of the Legislature desires a thousand dollars for a hospital in one part of the State; another member desires a thousand dollars for an orphan asylum in another part of the State. The effect is that they combine so as to get their respective appropriations, until at last we have come to make appropriations for hospitals to the amount of eighty thousand dollars per year. If application should be made as is proposed in the article of the Committee on Charities, these abuses will be prevented for all time to come.

MR. MURPHY—I think the spirit and intention of the gentlemen's clause is to write it (I do not intend to make particular reference to it now) so on the characters of these institutions that they shall receive aid according as they are not of a sectarian character. If I am wrong I will stand corrected, but I apprehend I am correct in my reading of his report. But that is enough for my purpose. Under the amendment that has been proposed by the gentleman from Onondaga [Mr. Alvord] since he has accepted my amendment, it seems to me to be unnecessary to make any special provision on the subject of charities as is suggested by the gentleman from Richmond. If we adopt the amendment of the gentleman from Onondaga, it will furnish all the security that is required against improvident donations from the public treasury.

MR. KERNAN—I desire that the Convention should consider and dispose of this section of the finance report under consideration, and of the report which has been made by the Committee on Charities together, and at the same time. I am very willing, nevertheless, to state briefly now the views I entertain, and the position I wish to occupy, and, so far as I know, the views entertained by, and the position of the religious de-

nomination to which I belong and which has been brought somewhat into this discussion, wishes to occupy upon this question. I avail myself of this opportunity to do so, because I believe the petitions which have been presented to this body praying that a provision be inserted in the Constitution forbidding the Legislature to appropriate money or property by way, of aid to "sectarian institutions," were inspired by jealousy toward the Catholic denomination of christians, and were aimed at charitable institutions founded mainly by members of that church, and in charge of persons professing its creed. I think every member of this Convention understood the originators of those petitions to mean by the term "sectarian institutions" what are popularly known as "Catholic institutions" for charitable purposes, like orphan asylums, hospitals, etc., in the charge of sisters of charity, and others of that faith. The desire intended to be expressed was that institutions of this character should never receive any aid from the State. Sir, when individuals belonging to the Catholic church establish an hospital, they will usually place it in charge of sisters of charity, and the trustees will naturally be members of the Catholic church. The objects of such institutions are, and they uniformly, I believe, do receive the afflicted without reference to their creed. I have never heard complaint that in these institutions persons who were not Catholics were in any way annoyed on account of their creed. Nevertheless, these charitable institutions, on account of the creed of their founders, and of those in charge of them are to be excluded from any aid according to the intent of these petitioners, and according to the report of the Committee on Charities which has been made to the Convention. In reference to orphan asylums, juvenile reformatories, and the like, those founded by Catholics are usually placed in charge of sisters of charity, or of men known as christian brothers, and experience proves with how much advantage. These asylums are established for the care and education of the fatherless or outcast children of a tender age—Catholics establish them for the care of children of Catholic parents; they do not establish them for the purpose of making proselytes; they do not seek to have children of Protestant parents placed in them; they would not refuse to take a friendless child on account of its creed or that of its parents but they frankly say to all, our institution is founded for the children of Catholics; we hold it to be right and proper that children having no parents or guardians should be taught some Christian creed, and not reared without any; hence we have an institution for children of Catholic parentage, and we do not wish to receive any except those who are to be educated in that creed. Hence we hold it to be right and commendable in Protestants to provide asylums for the care and education of destitute children, who or whose parents are of their creed. We do not believe that these children should be reared without any religious education; but we believe that they should be educated in the creed of their parents or guardians. It will necessarily occur that every institution of the kind must be more or less sectarian in its character and influence;

in reality, whatever may be the claim, all these charitable institutions, founded and sustained mainly by private charity are sectarian to a greater or less degree. But the majority of the Committee on Charities recommend that no institution shall receive any aid from the State unless the board of charities, provided for in its report, shall determine "that it is not religious or sectarian in its character, and that a majority of its managers are not members of one religious denomination." Sir, in a community, situate as ours is, made up of people belonging to the different christian denominations, where each denomination, moved by christian charity, founds institutions for the care of orphans, the education and reformation of youth, the relief of the poor and the nursing of the sick, and naturally and properly places them in charge of those of their own faith, the institutions will always be to some degree sectarian in their character; not in the bad, bigoted sense of the term, but in the sense that their teachings and influence will be in favor of the denomination which founded them and upon whose members they must mainly rely for aid and support. It is the spirit of charity inculcated as a duty by the christian religion as received by all denominations, which organizes and sustains all these institutions. But for this they would not exist; this spirit operating upon the different religious denominations creates these institutions; they will inevitably partake of the character of their founders, and whenever they cease to be religious in their character and influence, in accordance with the teachings of some one of the christian denominations, they will soon cease to be successful or useful. Sir, the provision under consideration, reported by the Committee on Finance, by which it is provided that the Legislature shall not donate any moneys or property of the State to any person, association or corporation, is correct and just. According to the theory of our government, all sects and denominations of religion are to have equal rights, and there is to be no discrimination in favor of or against any. The members of one denomination are not to be taxed to support the religious, charitable or educational institutions of the other. This is as it should be. The provision reported by the Committee on Finance is based upon this principle and will carry it into effect. It cuts all these institutions off from the public treasury; it places them, as they should be, on an equal footing; it leaves them to be supported and sustained by the charitable contributions of the individuals and religious denominations which organize and control them. This is in accordance with the principles of our government, and it is just to all. It will prevent jealousy and sectarian bitterness, which are ever to be deplored, from springing up between the members of the different religious denominations on account of real or fancied inequality in the appropriations made to charitable institutions. We have seen in the petitions sent to this body, and in the communications sent to its members, evidences of this jealousy, bitterness and bigotry arising from the appropriations heretofore, made by the Legislature to these institutions. Such unkind and uncharitable sentiments among the members of the different sects are to

be regretted; they are at war with the holiest precepts of that christianity which all profess. No good, but unmitigated evil to our government and people grow out of such sentiments. So far as we can we should obviate all occasion for them. The provision under consideration does so, so far as they can arise from these donations by the State. The provision meets my approval, and it will meet the approval of the religious denomination to which I belong. It places all on equality; it prohibits the taxation of one class or denomination for the aid of the institutions of another; it prevents unfair discrimination; it puts an end to jealousy on the subject of State aid to private institutions. Now, sir, will these benevolent and charitable institutions fail to be prosperous and useful, because not occasionally, as heretofore, aided from the State treasury? They have been founded and mainly sustained by the individual contributions of the charitable; by the concerted action of the members of the different christian churches, each laboring for the institutions which he believes best adapted to the wants of his time and locality, by the liberal contributions every where of benevolent and generous men who are ever ready to aid any work of charity, without regard to the religious opinions of those who may have it in charge. The different religious denominations, instead of watching the State treasury with jealous eyes, will enter into a generous rivalry in forwarding and sustaining institutions for the relief of the orphan, the sick and the poor who may be found among them; each sect will rejoice in the good it may do, and neither will be jealous of, but rejoice in the success of other sects in doing works of mercy in the name of the common father of all. Sir, while these are my sentiments, while these are the sentiments as I believe of the body of the clergy, and members of the church to which I belong, I have not wished to be active in inserting in the Constitution of the State, a provision that never under any circumstances should the State grant aid to an orphan asylum, an hospital, a reformatory or other institution of that kind. I have been willing to leave the Constitution as it is if the donations made are fairly and equally, according to the good work each does, distributed among the charitable institutions of the State without reference to sect or creed. But, sir, jealousies have arisen on the subject, and hence I desire to say on behalf of myself and the religious denomination to which I belong, that we recognize the justice of the provision reported by the Committee on Finance, cutting off all these institutions from the State treasury; that we recognize the justice and wisdom of allowing each denomination and each class of citizens to sustain the institutions in which they take an interest, and that we realize the injustice of taxing one denomination to sustain in any way another, and that we are ready to unite in approving and adopting the principle embodied in the provision reported by the Committee on Finance. Or, if it be more acceptable to others, we are willing to leave the subject as proposed by the gentleman from Onondaga [Mr. Alvord], to the discretion of the Legislature, guarded, as proposed, by the amendment of the gentleman from Kings [Mr.

Murphy] from abuse or unfairness. But, sir, I desire, and shall move the Convention, that this provision be passed over for the present, and considered and discussed with the report of the majority of the Committee on Charities. I am opposed to amending at this time the provision under consideration, as proposed by the gentleman from Onondaga [Mr. Alvord] by adding to it "except as otherwise provided in this Constitution," and then when the report on charities comes up having a provision adopted, under which unjust and unfair discriminations may be made against the charitable institutions of some of the religious denominations, and under which the Legislature will be prevented from dealing, as to donations, with all these institutions in a spirit of equality and justice. Sir, I am opposed to the entire scheme reported by the majority of the Committee on Charities. I am opposed to establishing by the Constitution of any such board as they propose (of which I will speak at another time). I am opposed to placing in the Constitution of the State a provision which allows the Legislature to grant donations to private charitable institutions, but which declares that no such institution which is religious or sectarian in its character, or a majority of whose trustees belong to any one denomination, shall ever receive any aid from the State. Why, sir, they must be heathen in their character to obtain aid under this provision. They must be free from any religious character or tendency. Those in charge of an orphan asylum or reformatory institution must not teach the children under their charge the Christian religion as held by any denomination, under penalty of falling under the law of the Constitution of the State. Sir, I think I know enough of the members of this body, and of the people of this State, to affirm that no such provision will be adopted as a part of the organic law of this christian State. I do the chairman of the Committee on Charities [Mr. E. Brooks] the justice to affirm that he is not himself in favor of this part of the article reported from that committee, and that he will himself move to strike it out when the report comes up for consideration. The principles of the eloquent report made by the gentleman from Richmond [Mr. E. Brooks], and with which he accompanied the article to which I am opposed, are the best argument against this provision of the article. He shows the great and increasing need of the inculcation of religious sentiments among us; that these charitable institutions are greatly needed to educate youth who are without parent, or guardian, or means, so they shall avoid sin and crime, and to reform the neglected children who have taken the first step in crime. He shows that but comparatively a small amount has been donated by the State during the past twenty years in aid of these greatly needed charitable institutions. Yet we all know that these charitable institutions have been founded and sustained, and have been and are doing great good all over the State. Look at Buffalo, Rochester, Syracuse, Utica, Albany, Troy, New York, Brooklyn, and many other localities and see what has been done in the way of hospitals, orphan asylums, and reformatories: what has

built them and supported them? Not State aid, but christian charity, as inculcated by the christian religion, and put in practice through the agencies of the different religious denominations. Catholics and Protestants have alike labored and have alike built up these institutions, where the forsaken, the outcast, and the erring children of their respective creeds might be gathered in and brought up in the religious faith of their parents. These institutions should never be—I trust they are not, often—proselytizing institutions. Founded by persons of different creeds, there should be no dissension or uncharitableness between them. Each will have a field wide enough, if it cares for and educates the destitute of its own creed, whether it be Protestant or Catholic. This is so in the city where I live, and I always speak of it with pride. There is there an orphan asylum established by Protestants, an excellent institution; there are also orphan asylums established by Catholics. In each the children are taught the Christian religion as held by its founders; each has "a religious character," and the one which failed to give the children religious instruction would, in my judgment, fail in its mission. But there is no bitterness, no jealousy, no uncharitableness between the institutions or between those who founded and support them respectively, and if either is in need of means an appeal to the supporters of the other would not fail of success. These and kindred institutions will be sustained without State aid. But if aid is given by the State let all institutions share it in proportion to the work they do, in proportion to the number or destitute each takes care of. Let there be no discrimination against those founded and managed by persons of one religious faith and in favor of those of another faith, or in favor of those who profess no creed. Either leave the Constitution so all may be aided according to the good they accomplish, or that none shall receive aid from the treasury. In this way alone can justice be done; in this way alone will we prevent jealousy and strife on the subject. The idea that you can fairly discriminate against what are called sectarian institutions in making donations by this State is not practicable; all of them are really sectarian in their character and influence. If they do not teach or practice any form of religion then they are really against all denominations, and come in conflict with all. Those who conscientiously believe that some creed should be taught and practiced should not be taxed to sustain an institution whose teaching is to disregard and ignore all creeds—all forms of worship. When we come to the consideration of the report of the Committee on Charities, I believe I can satisfy every man, that no such provision as that which declares that aid may be given to charitable institutions from the treasury, but that no institution which is religious or sectarian in its character shall receive any, should be adopted. I think we will come to the conclusion, either to cut all off, or we will leave the subject to the judgment and discretion of the Legislature. For the purpose of enabling us to consider the whole subject, I move that section 11 of the report of the Committee on Finance be passed

over and considered at the same time with the report of the Committee on Charities. These are important questions; and then we shall be confined as now to a few minutes discussion by each member, but can discuss the subject fully, and as I trust in a fair spirit, and thus come to a conclusion which will be wise and just toward all the people of the State.

Mr. T. W. DWIGHT—I hope that motion will prevail, so that the matter will be taken to the Committee on Charities; they have ideas upon this subject which they cannot possibly communicate to this committee in the short space of twenty minutes. I desire that motion may prevail.

Mr. CHURCH—I hope the motion will prevail. We will save time by uniting these two subjects.

Mr. BICKFORD—There would be no sort of use in this if these private charities were the only things to be considered. I did hope there would be a general acquiescence in the provisions of the Constitution of 1846 and rest satisfied with that.

Mr. E. BROOKS—If it would be in order to withdraw my amendment, I propose the amendment originally suggested—that we pass over this section for the present.

Mr. EVARTS—If this disposition of the eleventh section reported by the Committee on Finance should be made by general consent, and without any implication that the decision upon its general merits is to follow, the fate of the report of the Committee on Charities, I shall have no objection; but there are considerations of the greatest importance which, in my judgment, should be weighed by this Convention before they adopt this general obstruction of legislative power concerning the appropriating of the money of the State. On this subject of charities I have something to say. On the general subject I have something to say. I have no objection to the subject of charities being considered as a subordinate and divided portion of the whole subject of legislative obstruction, and all others equally important or equally interesting, upon a fair footing at the same time; but if this postponement of the general topic is to carry the implication that its consideration and its determination is to be subordinate to the views of this Convention on the subject of charities I shall object. If it can be done by a general consent that the whole subject of finance may come up intact and be considered intact, I shall agree.

The question was put on the motion to postpone the reconsideration, and was declared carried.

There being no further amendments, the SECRETARY proceeded to read the twelfth section, as follows:

SEC. 12. The State may, to meet casual deficits or failures in revenues, or for unexpected expenses not provided for, temporarily contract debts; but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed \$1,000,000, and the moneys arising from the loans creating such debts shall be applied to the purposes for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

Mr. TILDEN—The object of the provision allowing the incurring of debts not exceeding a million of dollars in analogy to the treasury note system as it used to prevail in the government of the Union, is that there might be this small margin to meet contingencies. It was therefore necessary, whenever any occasion should arise to exhaust a portion, or the whole of that million of dollars, that the money should be replenished as early as possible in order to preserve the elasticity of the system. It happened once in our experience after the Constitution of 1846 was adopted that the public officers made loans, long loans, exhausting the million of dollars. The effect of it was that for the time being the elasticity of the system was totally destroyed. Afterward, when the inconvenience was felt, when the true construction of this provision was recognized, that amount of money was replenished by taxation, I think, and the system restored. With a view of preventing the recurrence of any such error, I have offered a short additional clause or amendment which I will submit. It is to add at the end of the twelfth section the words, "but such temporary debts shall, in all cases, be provided for at the earliest practical period and shall be paid within two years after their contracting." I think that amendment, if adopted, would prevent the occurrence of such an error as happened about the year 1850—an error which is mischievous in its character, and tending to destroy the elasticity of the finance system under this clause.

The question was put on the amendment of Mr. Tilden, and it was declared carried.

The question recurred on the adoption of the section as amended.

Mr. EVARTS—I desire to offer an amendment to this section.

The SECRETARY proceeded to read the amendment:

Add to the section the following:

"But this section shall not restrain the Legislature from making any loan that may be required for the enlargement, completion or improvement of any of the canals of the State, whenever, and so far as it may be necessary, to properly accommodate the business to be done. The amount of such loans shall not exceed in the aggregate the sum of two millions of dollars, and shall be due after the year 1878, and payable out of the revenues of the canals accruing thereafter."

Mr. EVARTS—I understand the policy of the twelfth section of the report from the Finance Committee, as it now stands, to discourage and restrain the incurring of debts without the limitations being observed which are there imposed. And that is the general principle of the policy in the subject of finance. The amendment I have proposed to the section seeks to separate the policy and the power of the State government in this regard, so far as concerns its management and its responsibility to its duty concerning the canals, which are the public property and are so to remain. When the policy was adopted that is now confirmed by a decisive vote of this committee that the canal system of the State is to remain permanently a public system and not to be treated as a matter of profit for private enterprises, then it becomes necessary, as it seems to

me, that the State, which is to remain permanently the public proprietor of this system of works, should have as free and uncontrolled an administration of all the usual financial resources which the proper management of so vast a system of public works shall include. The gentleman from Westchester [Mr. Greeley] did not hesitate to strike at the root of this matter by practically proposing to sell all the canals of the State. The principle, not distinctly stated by that gentleman, but which probably lay at the foundation of his views, was that all governments—free governments—should be as little involved as possible in the ownership and administration of property. But in the generality of that proposition restrictions must be admitted. The system of our canal navigation, of our internal navigation, is too vast ever to become the subject of private proprietorship. If it should be attempted it would be found that there would be restrictions and regulations, and supervisions, and examinations concerning their administration by private corporations, and we should be involved in all the difficulties of restraint without the actual power of control. Is it then wise and prudent, when we had this proprietorship, thus deliberately to assume that we should be without the usual financial resources for their management? My policy in regard to the canal system of the State would be to liberate the government as fast and as far as possible from the evils, and burdens, and dangers, and perils of corruption, or otherwise, which attend the administration of such a vast pecuniary interest, and which prevents us from improving and perfecting the canal system, and bringing it as near as circumstances will permit to the Convention by a vast and navigable channel of trade—and then to reduce the care of the State to the imposition of tolls and the keeping up of repairs and to the fund directed to be disposed of for this purpose, and thus reach the minimum of State administration. Thereby we will reduce the tendency of the government to extravagance in the administration of its property. Toward that end I shall always seek by my counsel and by my vote to bring the action of this Convention. I avow there should be in the power of the Legislature this authority in respect to the loans for the improvement and completion of this navigable artery of the State as early as possible. Sir, I do not fear the Legislature, nor do I fear the people, nor is this an exception to our financial policy against the incurring of debt, but simply a liberation of the State in its control over its property from a restraint that was incompatible to a fair management of its property. I do not believe the canals are to be looked upon as a dangerous burden. I agree there is always corruption, and there is need of a vigilant observation. But so far as the power of the credit of the State is concerned to its successful financial administration, I apprehend no danger from this power of incurring debts for their improvement. We must look at the canal system as it is, and not as a burden. There is no danger that your ship of state will founder because of its burden. *Cæsarem viles*, "you carry Cæsar," and we can carry all the works of commercial transit in the world. If you will recognize and cherish these imperial fortunes,

they will carry you over every sea and through every financial storm.

Mr. TILDEN—I do not understand whether the gentleman proposes to make a debt proper by this amendment. It is spoken of as a loan; it is spoken of as being payable out of the revenues of the canal. I suppose, unless there is some language to restrict this effect, it would be, like any other loan of the State, a charge against all the property and revenues of the State—a loan made on its faith and honor, and which it is bound to pay, even though it pay it by taxation. I confess it strikes me that this proposition has the merit, if merit it be, of being about the worst that has been proposed on this subject. My honorable friend from Erie [Mr. Verplanck] proposed the other day a similar extension of the debt for the purpose of improving and enlarging the canals provided the people should vote for it, after it had been previously adopted and recommended by the State officers. This amendment, if I understand it, puts the whole matter in the hands of the Legislature without its going to the people at all. Sir, gentlemen talk about a distrust of the people—yet they seem to be very fearful, when the proposition to improve or enlarge the canals by means of a debt to be incurred for the purpose—of submitting that question to the people, particularly when it is accompanied by those wise and salutary provisions which the Convention, by such a decisive vote, the other day decided to preserve. First, that the measure should be simply for the one work specified; second, that it should be accompanied in its submission to the people with the provision for a sinking fund for the ultimate payment of the debt. Sir, I cannot deem it possible after the vote a few days ago, in which a similar proposition—freer from objections than this—received but thirty-six votes in this body, that it is necessary to take up much time in discussing this—a revival of substantially the same idea in a worse form. For my part I do not fear to go before the people with any measure which, in my judgment, shall be necessary for the improvement of the public works, and which shall commend itself to the judgment of the people. I have not that morbid apprehension of saying to the people, if it is best for you to incur this debt, you must provide the means of payment. I do not feel that apprehension which seems to prevail in respect to the restriction that there shall be no "log-rolling" among the different localities in the proposition so to be submitted to the people. Sir, I say distinctly, as I have said on several former occasions, I am for preserving, protecting and improving the canals in any way that commends itself to my deliberate judgment; in any way that is practically and really necessary, and that shall be devised as most expedient for that object. I am apprehensive of the crude, imperfect and wild schemes constantly got up without proper inquiry, without any evidence that they are actually necessary, and rushed through legislative bodies. Sir, I think we have escaped in this Convention one of the wildest of such schemes which has ever been proposed to any deliberative body. After having received the sanction of the public officers to some extent in the report of the canal board,

when it comes to be made the subject of discussion here, it is all withdrawn and abandoned by the very committee which proposed it, without being submitted to our vote. Sir, this experience of ours is an instructive lesson. Suppose something equally unwise and impracticable should happen to be presented before your legislative bodies, the Legislature of next winter, perhaps, and should happen to meet with better success than it would be able to meet in a body as sedate and as intelligent as this body is; suppose it should happen by combinations among local interests, to be carried through and we be thereby involved in a debt of ten millions of dollars. Well, we spend that ten millions; it is totally useless unless we spend ten or twenty more millions to complete the work which the ten millions has begun. Sir, precisely, in my judgment, this result would follow the expenditure of the eight millions it was proposed to spend in pulling up the system of double locks on the Erie canal, from end to end; beginning a new work dependent for its success on different adaptations of its locks, of the water-way, of the boat; and requiring that we should go on, because what we had made would be useless, and we must yet make valuable what we had begun. Sir, I think we should at once by our vote on this question decide this controversy. We have it now for the third time in a shape a little different, and somewhat worse than the first, and certainly worse than the second, although the first proposed to insert engineering and hydraulics in the Constitution.

Mr. EVARTS—The proposition seeks to provide the Legislature with power to the extent of ten millions of dollars in its administration of the public works confided to its permanent care, for the improvement of that property. Nor does it overlook that trust in the people, upon which my friend so much reposes; for the proposition is to be wholly ineffectual until the people have adopted it; and then the second time through their chosen representatives. Although it is true this matter has been considered in Convention, I have had no opportunity to express my views upon it, except to vote, as I did, as one of the thirty-six, in favor of the amendment proposed by the gentleman from Erie [Mr. Verplanck]. I should be quite willing to feel I did my duty in the matter of this finance system for the State, and the canal improvements, to vote for, and insist upon the adoption of this amendment; but as there is no reason to suppose it would secure the votes of the majority of the Convention, I beg leave to withdraw it.

The amendment was withdrawn.

The question was put on the section as amended, and it was declared adopted.

There being no further amendments the SECRETARY proceeded to read the thirteenth section, as follows:

SEC. 13. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection or defend the State in war; but the money arising from the contraction of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Mr. RUMSEY moved to insert in the third line, the words "or the United States," after the word "State."

Mr. FOLGER moved to amend section 13, by inserting "or the," and after the word "invasion" in the second line insert the words, "of the State or the United States," and after the word "State" in the third line, insert "or the United States."

Mr. RUMSEY—I will withdraw my amendment.

Mr. FOLGER—I propose that as a substitute for the first two lines and part of the third line, ending with the word "war."

Mr. TILDEN—I should like to ask my friend from Ontario [Mr. Folger] if he has any doubt that the powers expressed in that section as it stands extend to the case he alludes to. That is to say can there be any war against this State that is not war against the United States?—can there be any war against the United States that is not war against this State?

Mr. FOLGER—Whatever doubts I might have on the subject theoretically I have met the practical difficulty within the last six years. During the time when this State was raising the men and means for aiding the United States in the suppression of the rebellion, there did arise a constitutional question, whether a debt could be created by the Legislature for that purpose of above a million of dollars. It was referred to the Attorney-General of the State, whose opinion was returned to the Legislature that it was bound by the provision of the Constitution to exercise its debt-making power within a million of dollars; and that by no provision of the Constitution could it raise a sum more than that unless by a submission to the people. This was when it was decided to raise \$30,000,000 with which to pay bounties to volunteers.

Mr. TILDEN—I would like to ask my friend who was the Attorney-General at that time?

Mr. FOLGER—The present Attorney-General. And there has been this practical difficulty, since the breaking out of the rebellion. The State officers of this State were obliged to borrow (if I may use that word, when they had no right to borrow), money from the banks in the city of Albany to start off the first thirty-eight regiments that left this State; and but for the large private fortune of Governor Morgan, which was (perhaps not legally, but morally) pledged for the repayment of that money to the banks which loaned it, and but for his large public spirit which prompted the pledge, the probability is that in that time of terror those thirty-eight regiments could not have left the State, there being no means of raising their outfit. Therefore, I conceive this matter may sometimes be of vital importance; that, if such an occasion should come again—I hope it never will—there should be no trammel upon this State to prevent its aiding the United States in suppressing insurrection anywhere within the Union.

Mr. TILDEN—I confess it did not occur to me as possible that such doubts could have arisen, as I understand the relations which exist between the different parts of our complicated framework of government. If, however, it be really so, I have

no objection to clear up any doubt that can exist in any man's mind about the amendment proposed.

Mr. BELL—I fully approve of the amendment offered by the gentleman from Ontario [Mr. Folger], and I am a little surprised the gentleman from New York [Mr. Tilden] has not heard of the doubt that was entertained in regard to the constitutional question of raising money to suppress the rebellion. It was quite common around the Legislature to say that there was no provision in the Constitution that permitted the State to raise money to suppress the rebellion; that this State was not engaged in the war; that we could not do it unless the State was actually attacked; and it was with difficulty that the funds were procured, on account of this inhibition. I think we had better settle the matter beyond a doubt, so as to be ready if such an emergency should occur in the future.

Mr. TILDEN—I hope the amendment will be adopted.

Mr. FOLGER—I desire to state that I was incorrect in saying that the present Attorney-General was in office at that time. It was Attorney-General Cochrane instead of Attorney-General Martindale.

Mr. CHURCH—Does the gentleman from Ontario [Mr. Folger] move to amend the latter part of the first clause.

Mr. FOLGER—I propose to amend it to read in this way: "To contract debts, to repel invasion of the State or the United States, or to suppress insurrection in the State or in the United States, and to defend the State or the United States in war." The expression is a little bungling, but I wish to convey that idea.

Mr. CHURCH—It strikes me that the insertion of the words "United States" in the last clause is not only unnecessary but improper. I do not quite agree with my friend from New York [Mr. Tilden] in relation to the original construction of this section—the construction of the section as it existed in the Constitution of 1846. I do not believe that section would authorize the contraction of a debt to repel an invasion of the State of Louisiana or the State of Kentucky or any part of the country that might belong to the United States. It was intended undoubtedly (I think that was the true construction of it) to give the Legislature the power to borrow money in case this State, regarded as an independent government, was invaded, or if insurrection existed here. I have no objection, and perhaps it is wise to make the amendment proposed by the gentleman from Ontario [Mr. Folger] in relation to repelling invasion of the United States, or suppressing insurrection in the United States; but I doubt the propriety myself, of inserting any provision here authorizing the Legislature to incur a debt in case the United States is engaged in a foreign war. The United States is a government under the Constitution of the United States—is a government possessing ample power to borrow money, contract debts and do every thing necessary to carry on a war with a foreign government. It only can declare war. The State of New York has no power as a State over the subject of a declaration of war against a foreign government, and I submit that

it is improper, I think unnecessary, to insert the present provision that this State, as a government, shall borrow money to carry on a foreign war with the government of the United States. The theory of our government is that within the powers of the respective State governments, they are entirely independent—capable of taking care of themselves. Within the powers conferred upon the general government of the United States they are absolutely unlimited and sovereign and should be left free to exercise all the powers conferred upon them without any interference on the part of a State; while, on the other hand, the State government, with the exception of such powers as are specifically conferred, is as independent a sovereign as any government on the face of the earth. And, while it is entirely proper that the Legislature should be allowed to contract debts and repel invasion of its territory or to suppress insurrection within its territory, I do not think it is proper for this State to interfere in the management of a public war with a foreign government. Therefore I hope the gentleman will consent to leave out of the last clause the words "or the United States."

Mr. FOLGER—I do not think it is necessary to discuss the theory of the government of the United States, and of the State of New York, or of the several States, and their respective powers. I do not conceive that such question is involved in this matter. The question is whether this State of New York has not such a great interest in the welfare and continuance and the support of the United States government as that it may not, at some time or other, be willing to pledge its men and property to sustain that national government and thereby to sustain its own government; that is the question. The question is whether that time did not once come when it was absolutely necessary for this State to strain every sinew to maintain the national government, because on the preservation of the national government depended its own existence. And it is with that view that this amendment is offered; because, the time did come once, and may come again, when this State was or may be called upon to bring forth all its resources of men and money to sustain the national government and thereby to protect itself. Under the present Constitution, it was held that the provision to raise money to defend the State in case of insurrection or rebellion meant insurrection within its own borders; that the provision in regard to rebellion and invasion, meant an invasion of its own borders, and that the provision to raise money to carry on war, meant a war against itself;—although I can hardly conceive upon what theory a war could be declared against New York by a foreign power, or upon what theory a war could be declared by New York against any other power. So that, strictly speaking, the language of the present Constitution, when it uses the word "war," must mean a war in which the whole United States is concerned. But the present power to raise money must be when that war comes within the borders of the State of New York, and it has to repel an invasion which the general government has failed to repel outside of the borders of the State. But do we not know that when Lee's army was at

Gettysburg, although its presence there was not an invasion of the State of New York, it was practically an attack upon the State of New York and her sovereignty; practically an attack upon her property, upon her liberties; and that if Lee had succeeded in crossing the Susquehanna, and Philadelphia had fallen, New York city and its vast material interests would have fallen next; that the necessity for this State to bestir herself was just as great with Lee's army at Chambersburg and York, as if it had been in New Jersey or on Manhattan Island even. It was then and subsequently perceived that our State Constitution was too restrictive in the powers conferred for the emergency which had then arisen. So that I conceive that this State ought, as a member of the Federal government, and as we of the States which are bound together by the bands of the Federal Union has a supreme interest in maintaining that band—I conceive that such an amendment is necessary to give power to it, for an emergency of this kind, to rise, and repel not only an invasion of its own borders, but to repel an invasion of any of the States—not only in its own territories but in the territory of any of the States, to carry on a war not only against itself but against the United States. But when invasion, insurrection, war rages in a distant State, they may roll their volumes up to, or within our own borders, and it may be the height of wise policy, of economy, to meet and trample them out there. And have we not all come to the conclusion, not only as citizens but as jurists, that this rebellion rose to such proportions, that it was war; that it came under that general character? Although it was a civil war it was still war. It got beyond insurrection and rebellion. As I understand, not only the decisions of the supreme court but the legislative and executive decisions and action in the conduct of the war were upon the ground that it had reached the magnitude of war and was properly designated war. Were not we, the State, involved in it? Was there not a demand upon our resources after it came to that point? Had we not a direct and tremendous interest in it? And yet, under the provision of this Constitution, under its construction, you could not beyond a certain, in war time, limited amount, raise a cent because it was, technically, not a war upon the State, but a war upon the general government.

Mr. CHURCH—The gentleman will understand that I do not object to the amendment so far as it should be applicable in such a war. And on examining it more closely I am glad to withdraw all objections.

Mr. TILDEN—I agree that it may be very well that an invasion or a war should happen in some parts of the United States when this State would not be called upon to take an active part in it—not the outset certainly; when it would fall properly within the province of the federal government to manage the whole affair, and when the whole affair could be safely and prudently left to its management. But, sir, on the other hand, there may be occasions which are not, in terms, invasions of the State of New York, where it is evidently necessary for this State to intervene by speedy and rapid measures. Sir, suppose

an enemy should land in Connecticut to make a movement against the city of New York, ought the State not to be in a situation to defend itself against the invader with all its powers? Sir, I remember very well the condition of things at the period alluded to by the gentleman from Ontario [Mr. Folger]. I remember very well saying, at that time, that it was the duty of New York, that it was her interest to defend herself on the Susquehanna and on the Delaware, if she would not have to defend herself on her own border. Sir, I felt at that time that there was this accessory motive, that if she would stand with her sister States, she must make their cause her cause, that the junction of all her forces and all her means was not only a matter of duty but a matter of interest and policy on her part. Sir, if there be any shadow of doubt that this first clause does not bear the construction which I have given it, and that is the power of repel invasion generally—if it means merely to repel an invasion of the territory of the State of New York then I agree that it ought to be made broader, that it ought to be made large enough to include dangers quite possible to happen in the life of the nation. The phraseology perhaps, may not be the most apt, but it expresses the object, and, therefore, I think, we had better adopt the amendment.

Mr. DALY—Do I understand that the gentleman from Orleans [Mr. Church] has withdrawn his objection.

Mr. CHURCH—I did not move an amendment; I suggested a modification merely.

The question was put on the amendment of Mr. Folger and it was declared carried.

The question recurred on the adoption of the thirteenth section as amended, and was declared adopted.

The SECRETARY proceeded to read the fourteenth section as follows:

SEC. 14. Except the debts specified in the twelfth and thirteenth sections of this article, no debts shall be hereafter contracted by or in behalf of this State, unless such debt shall be authorized by a law for some single work or object to be distinctly specified therein; and such laws shall impose and provide for a collection of a direct annual tax to pay, and sufficient to pay the interest on such debt as it falls due; and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof.

No such law shall take effect until it shall at a general election have been submitted to the people, and have received a majority of all the votes cast for and against it at such election.

On the final passage of such bill in either house of the Legislature, the question shall be taken by yeas and nays to be duly entered on the journals thereof, and shall be: "Shall this bill pass and ought the same to receive the sanction of the people?" The Legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same, and may at any time, by law, forbid the contracting of any further debts under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law,

shall remain in force and be irrevocable and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability. The money arising from any loan, or stock creating such debt or liability, shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on within three months after its passage, or at any general election when any other law, or any bill, or any amendment to the Constitution shall be submitted to be voted for or against.

Mr. McDONALD—I offer the following amendment:

After the words "from the time of the contracting thereof," in ninth line, insert, "Provided, however, that whenever any such debt shall be contracted for the enlargement, improvement or completion of the canals of this State, or any one or more of them, the surplus revenues of the canals may be pledged for the payment of the same, and said law need only provide for the collection of a direct annual tax to pay and sufficient to pay the deficiency, after the application of said surplus revenues, of the interest on such debt as it falls due, and also to discharge the principal thereof within eighteen years from the time of contracting thereof."

This amendment is offered for the purpose of bringing any loan for the purposes stated in the amendment directly under this fourteenth section, commonly called "the people's resolution." In order to understand its effect, the question which we have been discussing here may properly be stated. It is this: What shall become of the net revenues of the canals after setting apart \$2,418,000 for sinking fund after they are paid into the treasury? Have the canals any equitable lien thereon for their improvement, or have the people of the whole State an equitable lien? That is the only question there is before us; and that question has been decided by this Convention in a manner directly opposite to the decision of the Convention of 1846 on the same subject. The Convention of 1846 decided that before anything could be given for the improvement or enlargement of the canals, \$200,000 each year should be used for the purpose of the support of the government. By the amendment to the Constitution in 1854, it was changed, and a loan of ten and a half millions was preferred, and then the \$200,000 yearly was appropriated to support government.

The hour of half-past one having arrived, the PRESIDENT resumed the chair in Convention.

Mr. DALY—I ask leave of absence from the present session until next Tuesday morning.

There being no objection, leave was granted.

So the Convention took a recess until half-past seven o'clock.

EVENING SESSION.

The Convention re-assembled at half-past seven o'clock P. M., when proceedings were resumed.

Mr. RATHBUN—I ask leave of absence for my colleague, Mr. C. C. Dwight, until Monday next.

There being no objection, leave was granted.

Mr. FOWLER—I ask leave of absence until Tuesday next.

There being no objection, leave was granted.

Mr. ARCHER—I desire leave of absence for to-morrow.

There being no objection, leave was granted.

The Convention again resolved itself into Committee of the Whole on the reports of the Committee on the Finances of the State and the Committee on Canals, Mr. SMITH, of Fulton, in the chair.

The CHAIRMAN announced the pending question to be the amendment moved by Mr. McDonald to section 14 of the report of the Committee on Finance.

Mr. McDONALD—At the time of the adjournment I had stated that the only difference with regard to these surplus tolls was in reference to the priority of their disbursement. The tolls must go into the treasury first; and the only question that we decide here is how they shall be disbursed. I had stated that by the Constitution of 1846, after pledging the revenues for certain debts (for a portion of which they are now pledged), the Constitution provided that \$200,000 should first go to help support the government—to relieve the whole State from taxation. By the constitutional amendment of 1854 that restriction was removed, so far that a loan of \$10,500,000 for the improvement of the canals was preferred to the payment of the \$200,000. By the action of this Convention the \$200,000 has been dropped out entirely; and now, after pledging the revenues to pay the debts of the canals and what is called the general fund debt of over \$5,800,000 (which is not a debt of the canal in any sense), making in all \$21,407,682.22, the provision is that the remainder of the revenues shall be expended for the benefit of the canals, and if not so expended shall go back into the sinking fund to pay the debts of the canals. This Convention has therefore established that the revenues of the canals shall be appropriated to their own benefit in one of two ways, either to the payment of the debts for which their revenues are pledged or for their improvement. This Convention has also determined another thing—that it will not, in any way, incur an indebtedness on behalf of the State for an enlargement. But it has not determined, and I doubt whether it will, that within twenty years to come an enlargement may not possibly, yea, probably be needed. That is where the Convention of 1846 made its mistake. In thus determining that we will not enter upon an enlargement, that we will not enter into any debt, I think we have acted wisely; but we have not determined, nor can we determine, that within twenty years it may not be necessary to enlarge the Erie canal. I think there is no gentleman here who will claim that it is clearly demonstrated that it will not be necessary, and I believe the majority of this Convention think it may be necessary. It is therefore our duty to provide for such a possible necessity. What, then, is this amendment? Section 14 provides that an unlimited loan may be made for any purpose if the people will only provide by taxation for its payment within eighteen years. That is the section as it now

stands. The amendment is simply this, while it retains all these restrictions that the Legislature shall make a law, and shall submit it to the people; instead of providing for the raising of all the money by tax, the law which is submitted to the people shall simply provide that the revenues may be pledged and a tax laid for the residue. That is the only difference. Is this wise? Should the people be permitted to make that choice; or should we compel them to raise the whole amount by taxation, when they do not need it? To me it seems wise and just, as the canals are the only property which the State owns from which it derives a revenue; and therefore, as my colleague from Ontario [Mr. Lapham] has said, this is an exceptional case. As regards the canals, the State of New York may be said to own real estate; as regards its other property, it may be regarded as but personal estate. The simple proposition is that, if, hereafter, by the action of the people, the State of New York shall determine to improve its real estate, it may pledge the revenues from that real estate, in order to raise the money to improve it. These revenues by our action, are already pledged. We have already determined that the revenues shall go to that purpose, and this only provides another way of using them. That is all there is of it. It simply provides that instead of expending them by dribblets, \$300,000 or \$400,000 at a time, year after year, we may, if the people so vote, borrow and expend five million, and pledge the three or four hundred thousand dollars for the payment of this five millions. It is not urged that this shall be done now. It is simply submitted to the people of the State of New York that they shall have an opportunity to determine, if within the next twenty years, the question shall be submitted to them, whether to have the taxation or to pledge the revenues. The people of the State of New York should, and will probably act as a discreet individual would do; at least they should not be deprived of an opportunity so to act. But it may be asked what would a discreet individual do? Let us suppose the people—who are above us—have determined that the canal needs enlargement; that they have determined that it will require five millions of dollars to do it; what would a discreet person say, under such circumstances? "I have a farm worth forty million dollars; and I have concluded to improve it by expending five millions upon it; it is producing me three millions a year, and \$350,000 more than will pay the debts for which it is pledged. What shall I do? I will simply pledge these revenues, raise the five millions, and improve my property." We submit he would not let the revenues go and borrow so large an amount? That would not be a practical business transaction. Neither would it be a business transaction on the part of the State. The only question now is, whether, at any time, within twenty years, if the people shall determine to improve this canal, they shall not be allowed to make the transaction in the ordinary business way, as provided by this amendment. Another reason is that it will save taxation. If the revenues are pledged for a certain amount, by as much as the revenues thus pledged amount to, will the taxa-

tion be less? I hold in my hand a calculation, taken from the auditor's table, page 143, report of auditor made January 4, 1867, in regard to the requisite annuities to produce an amount, which I beg leave to read.

TABLE NO. 1.

Showing sums necessary to be raised annually to create a sinking fund, which at the rate of five per cent interest will redeem specified principal and interest at six per cent in eighteen years.

ANNUAL CONTRIBUTIONS.	TOTAL.	WILL PAY IN 18 YEARS.
For principal, \$169,287 77	\$169,287 77	\$5,000,000 00
" interest, 800,000 00		
For principal, \$270,828 43	\$750,828 43	\$8,000,000 00
" interest, 480,000 00		
For principal, \$338,535 54	\$988,535 54	\$10,000,000 00
" interest, 600,000 00		
For principal, \$507,803 31	\$1,407,803 31	\$15,000,000 00
interest, 900,000 00		

So that if the surplus revenues of canals should be only \$2,869,267.77, which is less than the average for the past seven years, it would create sinking funds to pay \$5,000,000 without taxation over and above the \$2,418,000 pledged to pay debts. If they should be \$3,000,000, then they would create sinking funds with the addition of only \$150,848.43, annual taxation sufficient to pay \$3,000,000, and with \$338,535.54, yearly taxation would create sinking funds for \$10,000,000. If the surplus revenues should, by the expenditure of a loan of \$15,000,000, increase to \$3,500,000, then taxation yearly (over surplus of revenues not pledged) would be \$307,803.31, to produce a sinking fund sufficient to pay \$15,000,000 loan. If by the expenditure of this \$15,000,000, the revenues should be increased to \$3,807,803.31 or less than \$1,000,000 more than average revenues for the past ten years, then there would be no taxation necessary to create sinking funds to pay the whole loan of \$15,000,000 without any taxation. Why, then, should not the people be allowed to determine whether they would not prefer to thus pledge the revenues and reduce taxation, if they choose, at any time within twenty years? Why should not the Legislature be allowed to submit this question to the people, and let them determine whether they will pledge these revenues rather than to suffer taxation for eighteen years? For these reasons it seems to me that the amendment ought to be allowed, so that the people may determine upon this question if they see fit within twenty years to improve the canal. If we do not adopt this amendment it is to be submitted to them under the fourteenth section with all the restrictions of that section, and exactly as the Constitution of 1846 requires. By adopting this we shall avoid the error of 1846. The Convention of 1846 committed this very error, and the consequence was that in 1851 the people determined almost unanimously that they would enlarge the canals. Then we had the Legislature of 1852, and they disbanded in order to avoid the responsibility, and were not willing to take the voice of the people, so they ran off, seventeen of them, and left the Senate without a quorum. Then came an order for an election, and finally the constitutional amendment of 1854. There was a determination on the part of the people of the State; and

yet for the want of this simple provision, the enlargement of the canals was postponed for four years after the people had determined it was necessary. Their error cost the people four years of delay; and the Convention should see to it that it does not work the same end. But those delegates here who represent those portions of this State not directly interested, or benefited by the canals may say, "It is all right enough, but you have our money; we have been taxed heavily for a canal in which we have no direct interest, and we want these taxes paid back into the treasury. It is about time we had them; for we have waited long enough. We will not make any such provision as this to take away our revenues hereafter." In reply to this I propose to show from tables prepared from the Comptroller's office that if you regard the money paid from every source (except their own revenues) toward the canals of this State simply as an investment giving them credit *only* for the money paid by them directly into the treasury of the State, and not allowing for any benefits to the people or property along their lines, that on this basis the investment is a good and profitable one. The foundation of my calculations are Convention Document No. 120, made in answer to a resolution of this Convention offered by the chairman of the Committee on Finance [Mr. Church] and certified to be correct by both the Comptroller and the Auditor. Taking the returns of these State officers in this document No. 120 as a foundation and regarding the whole amount of money paid toward canals as so much capital stock invested therein, I have made a table showing the profits derived therefrom, and the present condition of the investment, which I ask the privilege of reading:

TABLE No. 1.

Statement of capital stock converted by the people of the State of New York on its canal profits. (See Convention Document, No. 120.)

Whole amount \$21,608,953.27, which was derived from the following sources, viz.:

Salt duty,.....	\$2,085,458 06
Vendue duty,.....	3,592,039 05
Steamboat tax,.....	73,500 99
Sales of land,.....	108,755 18
	\$5,859,752 28

Deficiencies in revenues of lateral canals,.....	\$1,386,496 88
Direct taxes,.....	13,456,159 06
Interest and principal on canal loans,....	418,802 00
Miscellaneous,.....	532,730 05

Of these, as far as the tax payers or the whole people of the State are concerned, the first four items, viz.: salt duty, vendue duty, steamboat tax and sales of land, amounting to \$5,859,752.28 were not contributed by them, and hence may be called matured stock, being about \$16,000,000. actual *bona fide* stock paid by tax. On that account there has been paid by canals at different times \$11,350,804.80, and on a balance being struck to Jan. 1, 1867, allowing 6 per cent annual dividends, there remained due, \$38,484,633.95

Less,..... 18,681,968 57

\$19,802,794 38

Showing that the people have received over 6 per cent annual dividend or interest,..... 1,306,187 39

\$21,608,953 27

Making in fact about 6 per cent annual dividend on the whole \$21,000,000, and nearly eight per cent annually on the \$16,000,000 derived by tax. For that \$21,000,000 investment the people now own the following property: The canals, which, for the past seven years have, after deducting all stealings, produced a net annual income of \$3,000,000. Hence, as an investment at six per cent, they are worth \$50,000,000. Deduct (Auditor's report, 1867, p. 16) canal debt for which revenues are pledged, less sinking fund, \$15,402,976.77, shows value of property over its own debts, \$34,597,023.23. Hence the investment has always paid six per cent annually, and is now worth over 150 per cent. This does not include the general fund debt for which the revenues are pledged, as that is not a debt for canals but of the State for other purposes, and hence should not be charged. Does that not show a fair profit? The people of the State, beside being much benefited, have property of far more value than the money invested, and have received their interest upon it; and that is all they can reasonably ask. Should any one borrow of you \$7,000 to improve his farm, and by means of it should improve his farm and pay you back the \$7,000 with the interest, what harm does it do you if by the transaction he has added \$7,000 to the value of his farm? But from the above table it will be seen that of the \$21,000,000 invested in the canal, over \$2,000,000 were salt duty and \$3,500,000 vendue duty, beside other sums, so that over \$6,000,000 never came from taxation in any way, shape or manner upon the people of the State. But, by this statement, it will be seen that the canals have actually paid into the treasury six per cent up to this time upon all, including salt and vendue duty, and are worth fifty million dollars, while they are only fifteen millions in debt. The people of the State—the whole people, the people who reside in Delaware and Schoharie—have received in the treasury in money six per cent, and now have for their investment of \$21,000,000, property worth more than \$34,000,000. Clearly, taxation has no claim under such a state of facts. On the same basis (Document No. 120), I have made a statement of the profits of the canals for 1866, from which it appears that the canals paid into the treasury last year about eight per cent upon the amount invested; and that in 1878 the canals will have paid all their debt and three per cent on the investment by paying the general fund debt, and will then be worth \$53,000,000, entirely free from debt, which table I beg leave to read:

TABLE No. 2.

STATEMENT OF CANALS AND PROFITS FOR 1866.

Amount of capital stock,.....	\$23,000,000 00
Amount of debts \$17,966,600 less	
amount in sinking funds,.....	15,402,976 77

Auditor's report 1867 (p. 7).

Total receipts,.....	\$4,309,746 12
" expenditures,.....	1,494,969 73

Net profits,..... \$2,874,756 39

Of which it requires to pay interest on debts (p. 16),..... \$1,085,330 00

Net profits on stock or about 8 per cent., \$1,839,426 39

PROSPECTIVE STATEMENT FOR 1878.

Annual surplus revenues,.....	\$2,818,000 00
Deduct amount paid to sinking funds,...	2,418,000 00
	<u>\$400,000 00</u>
To be expended on improving, clearing and enlarging each year, which for eleven years would be,.....	\$4,400,000 00
This should at least increase the value of canals,.....	\$3 000,000 00
Add present value,.....	50,000,000 00
Making value of canals, 1878,.....	<u>\$53,000,000 00</u>

At which time the debt will be paid. The canals will also pay into sinking fund yearly for the general fund debt, about one quarter of \$2,418,000, or \$600,000 which is three per cent yearly on the capital. It is submitted then from these figures, the canals considered as an investment simply, show a good balance sheet both heretofore, at present, and prospectively and that the claim of equitable preference against their improvement has no good foundation.

The net income at that time will probably be at least,.....	\$3,000,000 00
So that from this to 1878, the people will receive three per cent annually, and at that time have for it \$33,000,000 capital, canals entirely free from debt, worth...	<u>53,000,000 00</u>

And bringing in net \$3,000,000, or very nearly fourteen per cent dividend yearly.

Of the canals, those that cost over \$30,000,000 have not paid running expenses, but are operated at a yearly loss of \$200,000 for benefit of, and by order of the people who own the stock. But it is claimed that the canals have not paid back the money invested on them. Who ever heard of a railroad or any investment paying back the capital? All, those who invest in it expect to get is the interest upon their money and property, to represent the principal. And the people of this State should ask no more of the canals. But I propose to go further. I propose to show that, if you charge against the canals and that portion of the people residing along them and directly benefited thereby, all money ever paid for their benefit, derived from taxation, or even derived from any other source, and also charge the railroads of the State and that portion of the people of this State residing along their line and directly benefited thereby, all moneys paid to them, derived from taxation *only*, the balance will be found to be largely against the railroads and those benefited, and in favor of the canals and those benefited. I have in my hand a table prepared in the Comptroller's office, showing the amount raised

by taxation and paid for the benefit of railroads which I beg leave to read:

STATEMENT showing the amount of principal and interest paid in each year on the State stock issued to railroad companies, which became a charge upon the State treasury, and interest at five per cent.

YEARS.	Principal and interest paid.	Interest at five per cent from time of payment.
1842.....	\$155,702 99	\$186,343 58
1843.....	191,936 50	230,734 41
1844.....	191,936 50	211,185 15
1845.....	191,936 50	201,536 83
1846.....	191,936 50	191,936 51
1847.....	191,936 50	182,387 19
1848.....	191,936 48	172,787 47
1849.....	191,936 48	163,188 55
1850.....	191,936 50	153,539 23
1851.....	191,936 50	143,989 91
1852.....	191,936 50	134,390 59
1853.....	204,631 88	123,004 23
1854.....	200,326 53	120,141 91
1855.....	200,326 53	110,130 08
1856.....	200,326 53	100,118 25
1857.....	200,326 53	90,106 42
1858.....	198,926 53	79,594 61
1859.....	609,069 77	213,171 97
1860.....	444,861 53	152,459 46
1861.....	1,578,486 53	384,121 63
1862.....	1,071,326 53	214,347 30
1863.....	48,736 53	7,310 48
1864.....	263,736 53	25,373 66
1865.....	237,405 00	11,870 25
1866.....	5,000 00	.....
	<u>\$7,536,537 12</u>	<u>\$3,565,367 19</u>
Interest, ...	<u>2,565,367 12</u>	
	<u>\$11,122,005 03</u>	

Payment to the Albany and Susquehanna Railroad Company.

Total principal and interest,.....	\$11,122,005 03
Principal and interest paid, \$500,000 00	
Interest at five per cent,....	<u>25,000 00</u>
	525,000 00
	<u>\$11,647,005 03</u>

I also have another table, also prepared in the Comptroller's office, showing the amount of salary and interest, vendue duty and statement included in amount paid toward canals and included in Convention Document No. 120, which also beg leave to read:

Table D.

No. of years' interest.	Salt duty.	Interest at five per cent from time of payment.
1917-49 years,.....	\$2,926 29	\$7,169 39
1918-48 " ".....	48,794 27	117,083 25
1919-47 " ".....	54,410 60	127,865 12
1920-46 " ".....	67,083 97	154,118 94
1921-45 " ".....	46,345 94	104,276 79
1922-44 " ".....	65,416 37	143,918 01
1923-43 " ".....	102,221 64	219,776 59
1924-42 " ".....	99,211 18	208,343 47
1925-41 " ".....	71,232 75	146,006 63
1926-40 " ".....	83,373 60	166,545 18
1927-39 " ".....	126,080 58	245,759 63
1928-38 " ".....	118,423 80	236,005 39
1929-37 " ".....	157,160 58	290,747 07
1930-36 " ".....	163,421 55	294,153 73
1931-35 " ".....	98,703 91	172,731 84
1932-34 " ".....	179,006 45	304,463 93
1933-33 " ".....	227,800 05	375,999 09
1934-32 " ".....	160,752 98	257,253 77
1935-31 " ".....	118,364 92	189,465 62
1936-30 " ".....	64,763 46	97,145 19
Interest, ...	\$2,055,458 06 \$3,841,869 55	\$3,841,869 55
	\$5,897,327 71	

Table D.—Continued.

No. of years' interest.	Vendue duty.	Steamboat tax.
1917-49 years,.....	\$73,061 41	\$16,509 93
1918-48 " ".....	145,943 03	18,903 70
1919-47 " ".....	111,319 04	16,412 44
1920-46 " ".....	132,653 07	6,894 92
1921-45 " ".....	121,195 97	5,000 00
1922-44 " ".....	146,495 50	5,000 00
1923-43 " ".....	181,814 36	5,000 00
1924-42 " ".....	196,424 73	.....
1925-41 " ".....	263,453 26	.....
1926-40 " ".....	203,787 84	.....
1927-39 " ".....	265,290 65	.....
1928-38 " ".....	221,696 40	.....
1929-37 " ".....	215,285 18	.....
1930-36 " ".....	179,061 02	.....
1931-35 " ".....	155,301 56	.....
1932-34 " ".....	250,424 02	.....
1933-33 " ".....	181,014 23	.....
1934-32 " ".....	160,837 04	.....
1935-31 " ".....	211,037 24	.....
1936-30 " ".....	187,194 20	.....
	\$3,422,039 05	\$73,509 99

From these and Convention Document No. 120, I have made up a table showing the comparative investment on and taxation for canals and persons benefited, and railroads and persons benefited, which I beg leave to read:

TABLE No. 1.

CANALS AGAINST WESTERN TRADE.

Dr. To amount of excess of general fund account over canal account.

CONVENTION DOCUMENT NO. —.

Amount of general fund acc't.	\$28,424,023 59
Annual receipts and interest at five per cent.	18,631,009 57
Amount of canal fund account, ...	\$19,802,794 28

Ca.

PRINCIPAL OF.

Amount brought forward, ...	\$19,802,794 28
Deduct amount of general fund debt, for which revenues of canals are pledged, and which is included in canal debt, ...	5,095,549 24
	\$18,917,245 14
If you should charge five per cent quarterly, it would add one per cent to interest, ...	1,910,729 38
If at seven per cent per annum add one per cent more, ...	1,910,729 39
	\$17,728,793 90
To which add canal debt as consolidated, viz.: Interest at five per cent, ...	\$18,917,245 14
Consolidated canal debt, ...	18,348,460 00
	\$32,165,705 14
At six per cent, ...	\$18,917,245 14
Consolidated canal debt, ...	18,348,460 00
	\$37,265,705 14
At seven per cent, ...	\$18,728,703 90
Consolidated canal debt, ...	18,348,460 00
	\$37,077,163 90

Which gives you the amount that the canals ought to pay, with interest, into the treasury before they shall be operated and managed, not to produce revenue, but to pay expenses only, on the theory that they should not be a source of revenue simply.

TABLE No. 2.

TAX PAYERS OF THOSE PORTIONS OF STATE DIRECTLY BENEFITED BY CANALS IN ACCOUNT WITH TAX PAYERS DIRECTLY BENEFITED BY RAILROADS.

Dr.

Amount of excess of general fund acc't over canal account, (Convention Document No. 120) \$19,802,794 28

This account includes all taxes paid for canals.

Ca.

By amount of general fund debt assumed by canals, and for which revenues are pledged, ...	\$5,095,549 24
By amount of taxes, with five per cent interest, paid toward railroads for benefit of those not directly benefited by canals (Table C), ...	11,647,005 08
By amount of salt duty included in general fund account, with five per cent interest, paid mostly by Western New York and those directly benefited (Table D), ...	5,907,327 71
We also claim there ought to be deducted the vendue duty, amounting, with five per cent interest (estimated), to, ...	5,599,080 03
And the steamboat tax, amounting, with five per cent interest (estimated), to, ...	128,509 09

(See Convention Document No. —.)

The people in those parts of the State not directly on canals, did not pay these or any considerable portion, and hence should not have credit for them in this account. This account is on the basis that the two portions of the State—that directly benefited by the canals and that not directly benefited by canals—are subject to the same taxation; but it is well known that those portions of the State directly benefited by the canals are assessed at a much higher valuation, and therefore pay a greater portion of tax, and hence the calculation is unfair against them, if (as we believe), the proportion is two-thirds to those directly benefited and one-third to those not then those directly interested would have paid one-sixth more than as calculated, and those not directly interested one-sixth less, which would make a difference against those not directly interested as follows:

Whole amount of taxation for canals, with five per cent interest, as stated by Mr. Church,...	\$18,000,000 00
Whole amount of taxation for railroads, with five per cent interest	11,647,006 02
With five per cent interest (Table C).....	\$29,647,006 02
One-sixth of which is.....	\$4,941,167 60
Hence, if taxes for railroads and salt duty is allowed, you have to credit of canals and those benefited.....	8,627,087 60
In addition you allow vendue duty, you have to credit of canals.....	12,219,126 65
If you also allow for probable excess of taxation paid by portions of State immediately benefited by canals, you have to credit of those portions.....	17,160,394 15
If you allow only three-fourths of salt duty which was added expressly for enlargement, and collected from Western New York, you have, to be credited canals and those benefited.....	1,908,756 67

When in addition to the results thus shown, it is also considered that for the investment of \$21,000,000, the people have received six per cent annually on their investment, and now have property worth \$35,000,000 over and above all debts, while the investment of over \$11,000,000 in railroads is a dead loss (considered as an investment), never has and never will pay a cent, we fail to see how the people residing in those portions of the State not along the canals, or their representatives here, can object to any application whatever of the surplus revenues of the canals for their own improvement.

Mr. HATCH—I want to ask the gentleman from Ontario a question; I understood him to say that his tables were from the Comptroller's office.

Mr. McDONALD—Yes, sir; these are all from the Comptroller's office, except those made by myself, as stated.

Mr. HATCH—Does the gentleman mean to say, from those figures, that he deduces the fact that the canals of the State only owe \$21,000,000 in money?

Mr. McDONALD—They do not owe that; yes, they owe that, but \$5,000,000 of that is general fund debt, and not in any manner for the canals. The proper debt of the canals is about \$15,000,000.

Mr. HATCH—Does the gentleman take into consideration the \$18,000,000 of advances?

Mr. McDONALD—Yes, sir. That is a portion of the \$21,000,000 invested in the canals as I have stated.

Mr. HATCH—Are the tables from the Comptroller's office?

Mr. McDONALD—Yes, sir; and they show these facts, that if you will allow the canals three-fourths of the salt duty, which was raised from people of Western New York expressly to enlarge canals, the railroads will owe the other parts of the State about two millions; and if you allow us the salt and the vendue duty, over twelve millions of dollars.

The question was then put on Mr. McDonald's amendment, and it was declared lost.

Mr. LAPHAM moved to insert in line four, after the word "for," the words "improving or completing the canals, or any of them, or for."

Mr. LAPHAM—I submit to the consideration of the committee that it is wholly unnecessary and unwise, in framing a fundamental law, to require that every law submitted to the people for

any expenditure upon the canals shall be regarded as a law for a single purpose, as applied to each of the canals of the State. In other words, to adopt the language employed by the Committee on Canals in the reasons annexed to their report, I submit that:

"The lateral canals should be treated as parts of an entire system, which, as a whole, is self-sustaining and highly remunerative to the State, and no part of the same can be abandoned without doing injustice to localities and incurring the serious and merited displeasure of large portions of the people. A majority of the railroads which have been constructed in the same or similar localities have proved disastrous and non-paying investments to the proprietors, yet no one in the sections interested would tolerate the idea of their abandonment."

I desire to call the attention of the committee to this consideration, which seems to me to dispose of this whole question. Taking the balance reported by the auditor as the sum now due to the people of the State from all the canals, those which have proved productive and those which have proved non-productive, striking a balance for principal and interest for all the investments which have ever been made for construction, repairs, and maintenance, with all the receipts which have been obtained from the canals with interest, the balance is a little over seven millions of dollars. According to this balance, the canals at the present time are paying to the people of this State more than forty per cent on what they have cost. If we take the present debt which is charged upon the canals, of a little over \$21,000,000, and regard that as the sum for which they are now indebted to the treasury, the result is that they are paying to the State now, in their net revenues, fifteen per cent on their cost. If we add to the present debt of \$21,000,000 the debt of advances by way of taxation, and accumulate the sum to the amount stated in the report of the Committee on Finance, to about \$39,000,000, the result is that even upon that they are now paying more than eight per cent net to the people of the State upon their cost. Now, I present to the consideration of this committee, this financial aspect of the question—forty per cent as shown by the balance-sheet, fifteen per cent as shown by the debts actually charged upon the canals, and more than eight per cent as shown by all the debts which anybody seeks to charge upon them—as a reason why, in the administration of the affairs of this State, we should deal with this subject as practical and sensible men. These lateral canals are important—with reference to the question whether they are paying investments—many of them as feeders to the Erie canal, and cannot be abandoned; and they are important, all of them, I think I may say, to the localities through which they are constructed; and the abandonment of them would involve the destruction of property worth more than three times the amount which it has cost the State to construct them and put them in operation. As to the Chenango canal, and as to the Genesee Valley canal, I have already suggested that with the destruction of the forests of this State and the increased demand for fuel from the coal fields

of Pennsylvania, when the Chenango canal extension is completed, and when the extension of the Genesee Valley canal is completed to Pennsylvania, each of these canals, in my judgment, is to become a paying investment to the people of this State. There can be no reasonable doubt, I think, that when the Chenango canal is open to the rich coal basins to which it leads, it will become a highly remunerative work not only of itself, but as a tributary to the Erie canal; and so with the Genesee Valley canal. All I ask is this: that in adopting the fourteenth section, the general policy of which I approve, the general intendment of which meets my entire and hearty concurrence, we shall provide that for the promotion and completion of these great public works, a single law may be submitted by the Legislature to the sanction of the people, and that they shall be regarded in the administration of the affairs of the State hereafter, as in law a single work or object within the meaning of this Constitution. Is there any danger whatever from that? Suppose the Legislature desire to submit, in accordance with the recommendation of the Canal Committee, a project to improve the locks on the Erie, Oswego, and Cayuga and Seneca canals. Is there any danger of any harm in submitting that as one proposition to the approval of the people by their vote? I submit that there is no hazard or risk in such submission; and that to require a separate submission of the Oswego canal, and a separate submission of the Erie canal, and a separate submission of the Cayuga and Seneca canal, is to involve the administration of the affairs of the State, and the management of its property, in confusion worse confounded; that it is to involve the administration of the affairs of the State, and the expenditure of money for these various objects as they are termed, which are really one common object, in a diversity and confusion which is inapplicable to this question, and which ought not, for a moment to be entertained. Moneys appropriated for that purpose, are moneys appropriated to a common object. The boats which navigate the Oswego, and the Cayuga and Seneca canals, are as much boats navigating the Erie canal as though they never left its channel. And the submission of the question in this form to the determination of the people, regarding them all as one work, is a submission which can involve no danger to the rights of the people of this State.

Mr. CHURCH—There has already been so much discussion upon every point involved in this finance report, that I feel reluctant to add another word. But this is an attack, on one of the most important principles contained in the financial article of the Constitution of 1846. These gentlemen have made an attack upon almost every feature of that financial plan, and it has been voted down by this Convention; and I trust that this will be voted down. It is an attempt to break down, as I said, the most important feature of the twelfth section of the present Constitution—the feature that requires every work or object for which it is attempted to create a debt, to stand on its own merits, and to be passed upon by the people as an independent object or work. The gentleman from Ontario [Mr. Lapham] attempts by

this amendment to enable the Legislature to unite all the interests together, and submit them as one consolidated whole; to take the friends of the Chenango canal, who may feel an interest in having money expended there, the friends of the Oswego canal, the friends of the Champlain canal of the Black River canal, of the Genesee Valley canal, of all the canals of the State, and to unite their interests and submit them all to the people in that way. It was this very thing which this section was designed to prevent. It is that very principle which has enabled these bills to be "log rolled" through the Legislature. One railroad bill passes because another railroad bill is desired. One scheme for the expenditure of money passes because another scheme is desired; and they unite together, and pass them through the Legislature, and then they submit them to the people, and the same principle applies there. I trust that after the votes which have been had in relation to this subject, this Convention will not take out of this Constitution the most valuable feature in it.

Mr. LAPHAM—Will the gentleman allow me to ask him a question? Is there any danger of localities uniting for the improvement of the works of the State, such as applies to localities uniting in the Legislature upon bills for private purposes?

Mr. CHURCH—Yes, sir; and the gentleman, if he has any experience at all in matters of this kind, knows it. The gentleman knows that you can unite local interests upon the canals as well as upon the railroads; that you can unite the interests of large sections of the State together for the purpose of carrying a measure through, not only with the Legislature but with the people; and that is the very thing this Constitution is designed to prevent. The gentleman says they are one work or object. If so, this amendment is not at all needed, because the second section reads now "one work or object." No; the gentleman knows perfectly well that the design of this was to prevent the aggregation of different interests together for the purpose of carrying a debt-creating scheme either with the Legislature or with the people. It was the object of it to prevent this "log-rolling,"—this uniting of interests. If it is desired to enlarge the locks of the Erie canal, the Cayuga and Seneca canal, and the Oswego canal, and it cannot be conveniently done by the law for a single work, it is the easiest thing in the world, and no time is lost, in doing precisely what was done in 1854, changing the Constitution so as to meet the exigency of the case. Then you are obliged to submit it to two Legislatures. It passes one body; it goes to the people for discussion and consideration; the people return it to another Legislature and they pass it, and then it goes to the people for their vote; which furnishes some check against the creation of a debt. There is no difficulty about it. But if you incorporate this principle in your Constitution; if you say that you may unite all these local interests; you say that you may, by offering the temptation of the expenditure of a large amount of money to all these varied interests, succeed in putting a bill through the Legislature and before the people, that, taken separately for each work, would not stand for a single moment. I hope this Conven-

tion will stand by the principles on which they have so far voted, and not allow this section to be undermined in the manner proposed by the gentleman from Ontario. Section 14 of this article is precisely the twelfth section of the Constitution of 1846, word for word, without any alteration whatever. The gentleman from Ontario introduces this proposition with a glowing account of the profits of the canals. Now, sir, I assert, without the fear of contradiction, that as a business, the State of New York has never made one cent out of the canals, and never will. It is as certain as death that as an investment—as a business, the State of New York will never make a dollar. I do not undervalue by that remark the importance of the canals at all. The incidental advantages which they have conferred upon the people of this State are very great, and I appreciate them as highly as any gentleman in this Convention. But when you talk to me about making profits, and putting money into the treasury of the State, I know it is not true. It never was true and never will be true. I say, on the other hand, that the canals are more deeply in debt than ever before in the history of the State.

Mr. McDONALD—Will the gentleman allow me to ask him how, if there was no profit, he accounts for the fact that when the people have put into the canals \$21,000,000, and that is all they have put in, salt duty and all, and when five per cent interest is allowed, all that is now due the people, according to his own figures, is \$19,000,000? What has paid that five per cent or a million dollars annually? And what has reduced the amount by \$2,000,000?

Mr. CHURCH—When the gentleman from Ontario [Mr. McDonald] has ciphered considerably more from the Comptroller's tables than he has already ciphered he will find out that they are a very dangerous element to form conclusions from, unless he takes into account all the facts and circumstances connected with them. That these canals might have been a source of profit if they had been managed as a corporation or individual would have managed their own business, I do not deny. But, sir, this debt policy, this policy of borrowing money and paying interest upon it, has prevented any profits being made to the State by the canals. You have paid in interest nearly as much, since the enlargement of the canals commenced, as you have expended in the enlargement. You have swamped your revenues by paying interest upon these debts. If we had never had anybody in this hall to clamor for making debts for the canals, your canals might have been profitable as a business or as an investment for the State.

Mr. LAPHAM—Will the gentleman allow me to inquire how much he claims that the canals are indebted to the State to-day?

Mr. CHURCH—I claim that the canals are liable to pay the debts specified in section 1 of the article we have adopted.

Mr. LAPHAM—Thirty-nine millions; is it not?

Mr. CHURCH—Twenty-one millions. I claim also that the canals are liable to return to the treasury the fourteen millions which have been advanced by taxation, with interest thereon.

Mr. LAPHAM—That in round numbers is \$39,000,000?

Mr. CHURCH—That in round numbers is \$39,000,000.

Mr. LAPHAM—The profits on that are eight per cent. Is that unprofitable?

Mr. CHURCH—I suppose they are eight per cent. I have no doubt that for the last twenty years it would have been perfectly easy for any gentleman to cipher out how profitable the canals might be made. I am speaking of a practical fact; and say that the canal revenues are indebted to-day to the treasury of the State and outstanding creditors to the amount of thirty-nine millions of dollars, and that they must pay the State of New York eighteen millions, and pay its creditors twenty-one millions, before it is even with them; and before that is paid the gentleman from Ontario [Mr. Lapham] and myself will be a good deal older men than we are to-day. Does the gentleman from Ontario suppose for a single moment that the eighteen millions will ever be paid? The gentleman himself has stood up here to-night and denied the existence of the debt. He has stood up here and denied that the canals ought to pay it. If gentleman will do that now, when the thing is fresh, what will they not do in a few years from this time, when they come here clamoring for more money for these canals. It will never be paid. I have no expectation it will ever be paid.

Mr. LAPHAM—I have not taken the ground that it was not a debt. I have taken the ground that the resources of the canals are paid into the treasury, and whether they are paid into the treasury for refunding that or not is wholly immaterial. They go into the treasury in any event, and it is a matter of no consequence.

Mr. CHURCH—The gentleman from Ontario [Mr. Lapham] denied that there was any such amount due to the treasury of the State.

Mr. LAPHAM—I denied the accuracy of the sum.

Mr. CHURCH—Certainly; he denies the accuracy of the sum, although there is not the least particle or shadow of ground for denying it; not the least, any more than if I should lend you ten thousand dollars to-night, and to-morrow morning you should say it is denied. All idea of making profit out of the canals should be discarded. I am not in favor myself of making profits from the canals. I have never advocated the principle for a single moment that we ought to make profits. I think the canals ought to return to the general treasury of the State for the use of the whole people, the money that has been advanced, and when that has been done I am perfectly willing and in favor of reducing the tolls so as only to keep the canals in repair; as I have often repeated during this discussion. But I say only as a fact that we have never received any profit, and never will, and never expect to. As to the lateral canals, I agree with the gentleman from Ontario, that they cannot be abandoned. I agree entirely that they are to be kept by the State, taken care of, and improved when necessary to be improved. Whether they are all wise or unwise is not a question for us to determine. It is enough that we have these

canals on our hands, and they constitute one great entire system of public works. But in making your Constitution, to guard the people against the creation of debt, I tell you that, in my judgment, it is important not to let one bar down or to open one single gate. Put them all up. The men who want money will get through them fast enough. They never failed yet in opening any door that was made to shut up and close the treasury of your State; and they never will. Let us not therefore leave any down. Let us vote down the amendment of the gentleman from Ontario. Let us adhere to the principles of this Constitution. If it is necessary to make enlargement at any time, it is easy to do it by an amendment of the Constitution. If you desire to do it for some single public work, you can submit it under this section. But I hope this Convention will not allow several different and distinct interests to be united any more for the canals than they would for the railroads or for any other object or project whatever. While I am up I desire to say a word; (I hope that the discussion will be brought to a close before long. I certainly have got very tired of it myself). But I want to say one word to my friend from Onondaga [Mr. Alvord] in respect to a remark he made last night. He told us of the great mistake that was committed in 1842 in stopping the work, which cost the State thousands upon thousands of dollars, and retarded the enlargement. He said we ought to have gone on and finished the work. Now let me tell the gentleman from Onondaga in all kindness, because, sir, I was a member of the House at the time that law passed, and voted for it myself, that it was not the act of 1842 that stopped the work on your canals. No, sir; the work was stopped nearly one year previous to that time; not by any act of the Legislature, not by any law, but stopped for the want of ability in the State to borrow money to proceed with the work. It stopped because your stocks were being hawked about in the money markets at seventy-five cents on the dollar, for loans made for sixty to ninety days, to live from hand to mouth, to go on as long as they did with the work. The work stopped not through the instrumentality of Michael Hoffman; who, notwithstanding what the gentleman from Onondaga may say, was, in my judgment, one of the ablest and purest statesmen that ever lived in this State, as honest as the sun and as able as he was honest; and the most complimentary thing that I could say of Michael Hoffman is that this Convention, in almost every instance where a contest has arisen between the reports of the committees of this Convention and the Constitution of 1846, have fallen back upon the principles of that Constitution, which principles were impressed upon it by the genius, character, and ability of Michael Hoffman.

Here the gavel fell, the gentleman's time having expired.

Mr. COMSTOCK—I am under the impression that this amendment ought to prevail. There are a few things that I am willing to leave to the Legislature and the people, and this is one of them. The reported section requires that the law authorizing the creation of the debt here contemplated shall specify some single work to which

the money is to be appropriated—some single work or object. Now, sir, it is taken for granted in this Convention that the public interests either require now, or may hereafter require, some enlargement of the Erie canal. All the action in this Convention upon this article is founded upon that assumption, that the grand trunk canal either now requires, or will hereafter require enlargement and improvement. Now, whenever that necessity arises, exactly the same necessity will require a similar enlargement or improvement of at least some of the lateral canals. Take, for example, the Oswego canal. It is well known that that connects Lake Ontario, at the port of Oswego, with the Erie canal at about its center; that it receives the Western commerce and produce by the lakes, through the Welland canal in Canada; that that produce and tonnage is shipped at the port of Oswego by boats on the Oswego canal, and thence passed into the Erie canal. Now, sir, it requires no argument to prove that whenever the capacity of the locks or locks of the Erie canal require enlargement, the same necessity will exist in regard to the Oswego canal. That, as we all know, is the most important of all the feeders of the Erie canal, and whenever a question of enlarging or improving the Erie canal arises, the Oswego canal will be entitled to the same favorable consideration. The same remarks may be made in regard to the Cayuga and Seneca canal, which is a short canal of only twenty-one miles, I believe, connecting the Erie canal with the waters of Seneca lake. Now, sir, there is a vast amount of tonnage in the single article of coal, annually passed over that canal, which is now of the same capacity as the Erie, and which tonnage is carried in the same boats, eastward and westward, through the whole channel of the Erie canal. That tonnage, last year, was some 700,000 tons of coal. That little canal is to-day the most profitable of all the canals in the State. Whenever the necessity arises for enlarging the Erie, the same necessity will arise for enlarging the other canals. Now, the inconvenience of the Constitution, unless the amendment of the gentleman from Ontario shall prevail, will be that a law contemplating a public debt for improving the three canals I have named, or for improving any one canal, in connection with the Erie, would be unconstitutional and void, because it would not be for a "single work or object," in the language of the reported section. The Erie canal, and the Oswego canal, and the Cayuga and Seneca canal are all separate works, and in a certain sense separate objects. They would not come, collectively, within the purview of the reported article; and yet, as was well observed by the gentleman from Ontario [Mr. Lapham] they are parts of one system, in which the whole State is equally interested. For reasons of this character I think the amendment ought to prevail; and this being the whole question, I will not follow further the remarks which have been made on that subject.

Mr. ALVORD—We have have had a repetition again, this evening, of the old story of the Constitution of 1846, and the gentleman from Orleans [Mr. Church] has congratulated himself on

the fact that he has followed the footsteps of the Constitution of 1846, and that the Convention have sustained him. I am entirely satisfied, if he is, with the way the Convention have sustained his financial report up to this time. But I have, I think, a great deal more confidence in the intelligence of the people of the State than the gentleman from Orleans. I am willing to trust the people in the future as the occasion may require them to exercise their judgment. Now the proposition in the amendment is, that the question shall be submitted to the people, and that the people shall pass upon it. If the people of the State of New York, speaking in their sovereign capacity as the people, at the polls, shall determine by a majority of their votes in reference to particular matters in a certain direction, I trust I am democrat enough to submit, or rather I am democrat enough, before that, to leave the question for their decision. Now, as far as regards this matter of the canals, they are separate and distinct from any question of railroads or any question by which the State is to be called on to give money, or do anything for individuals or associations. This is the property of the people of the State of New York—the Oswego canal as much as the Genesee Valley, the Champlain as much as the Erie. We keep the accounts of all these canals together. They are kept as the canal account; and we have in this very Constitution which we are about making here, made the canal debt a debt for all our canals, and the surplus which goes to pay the indebtedness of the canals a sinking fund for the entire canals. They are one system; they are in truth and in fact one object, and it is for the purpose of putting it into the Constitution, so that there shall be no mistaking the sentiment and idea we have of the canal system in this State, that this amendment is desirable. Why, sir, in 1851, only five years after the enactment of the Constitution of 1846, there was a necessity for the improvement of the canals of this State. I need not go into a recital of the legislation which grew out of that necessity pressing itself upon the people. I need not detail the ridiculous (I might almost say disgraceful) scenes which took place in the Senate in regard to it. I need only point the gentleman from Orleans [Mr. Church] to the sober second thought of the people in 1854, when they went to work and put in action what ought to have been put in action in 1850. The people were entirely and perfectly satisfied, in the highest sense, of the imperative necessity for this work to go on in 1851 as much as in 1854; but, forsooth, in consequence of the constitutional objection from the opponents of the canal, bringing up before the supreme court the objections of the Constitution of 1846, they failed to go on from 1851 to 1854. For three years each Legislature coming here, as fast as it could, passed upon this subject, in order to bring it within the purview of the Constitution of 1846, the people having determined unequivocally, in 1851, what should be done. What, then, is the necessity of going through all this rigmale in order to get at it? The people will be just as well educated in the future as they have been in the past. We say that this attempt, by the constitutional provision in the fourteenth sec-

tion of the Constitution of 1846 to confine them to one, single work by the terms of the Constitution was frowned down by the people and was beaten, and the men who stood alongside of it were beaten with it, and in 1854 we had the Constitution amended to do that which the people desired in 1851. Now, sir, another thing. I desire to say here, to-night, in conjunction with the gentleman from Orleans [Mr. Church], that so far as regards Michael Hoffman, I believe him to have been an honest man.

Mr. FOLGER—Will the gentleman give way, while I move that the committee rise and report progress, and ask leave to sit again?

Mr. ALVORD—I will.

The question was put on the motion of Mr. Folger, and declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. SMITH, from the Committee of the Whole, reported that they had had under consideration the reports of the Committee on the Finances of the State and the Committee on Canals, had made some progress therein, but not having gone through with the same, had instructed their chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave, and declared carried.

On motion of Mr. FOLGER, the Convention adjourned.

THURSDAY, September 19, 1867.

The Convention met at nine o'clock.

Prayer was offered by Rev. E. L. MAGOON.

Mr. GERRY—I move to take from the table the resolution calling upon the commissioners of the board of excise. My object in doing so is that I am satisfied, after personal conversation with many of the gentlemen who voted to table the resolution yesterday, that its terms and meaning were not distinctly understood; and I ask unanimous consent to withdraw the resolution for the purpose of offering another, which will enable me to obtain in six lines the information desired.

No objection being made, leave was granted.

Mr. GERRY then offered the following as a substitute:

The SECRETARY read the resolution, as follows:

Resolved, That the commissioners of the board of excise of the city and county of New York be requested to furnish this Convention as early as practicable with a tabular statement showing:

1. The number of licenses granted by them from the time of the creation of the board to the present time.
2. The gross amount received by them for such licenses.
3. The number of complaints preferred against such licensees during the same period by the police.
4. The number of complaints preferred against such licensees by persons other than policemen during the same period.
5. The number of licenses revoked during such period.
6. The number of complaints not sustained during the same period.

This resolution laid on the table under the rule.

Mr. GERRY—I now move to take up the resolution which was tabled yesterday in regard to the information which was desired from the commissioners of the metropolitan fire department.

The question was put on the motion of Mr. Gerry, and it was declared carried.

The resolution was read, as follows:

Resolved, That the board of commissioners of the metropolitan fire department, be and they are hereby requested to furnish this Convention as early as practicable, with a tabular statement showing:

1. The number of men in the department during the years 1865, 1866 and 1867, respectively, and the amount of salaries paid in each of such years.

2. The number of engines transferred from the old fire department, and the number of new engines added during the same period, stating each year separately, together with the cost in each year of such addition.

3. The number of horses in use in each of such years, with the cost of the same and of their keeping.

4. The number of fires which have taken place within the precincts of the department during each of such years, with a statement of the amount of probable loss by such fires in each year, so far as the records of the department show the same.

Mr. GERRY—This resolution was not considered nor discussed by me yesterday at all. I simply wish to obtain these statistics in a tabular form; and it can be made in a statement of six lines on a half-sheet of paper. The department has those statistics already on hand, and it can take but a few days to send it up.

The question was put on the adoption of the resolution, and it was declared adopted.

Mr. VERPLANCK—I ask leave of absence for myself for next week.

Mr. ALVORD—I object. It is entirely evident that we cannot, by any possibility keep a quorum here, unless we put our foot down against these applications for leaves of absence, upon the part of members. We are here undertaking to work for the purpose of framing a Constitution to be submitted to the people; and there is a determination on the part of a majority, at least of a portion of this Convention, that this work shall go on. And it strikes me that if they have so determined, they will also be determined in so far forth as their voice can be heard in the matter, to keep themselves and a quorum also present here, for the purpose of transacting our business. We have not a quorum here this morning, and it is perfectly evident we will not have a quorum except possibly at intervals of half a dozen times to-day in order to go on with our work. Tomorrow, unless we put our foot down and say there shall be a quorum, we will not have a quorum. If we are determined to go on with our work and carry it through, we must also be determined that so far as it regards ourselves, we will hold a quorum here if we can by any possibility, under the rules of the Convention. I trust no leave of absence will be granted, unless it is an

absolute case of necessity growing out of illness.

Mr. BECKWITH—I hope that no excuse will be granted to any gentleman, except in case of illness. I think it is unjust to those of us who reside at distant parts of the State, and are compelled to spend Saturday and Monday here without doing anything; and unless gentlemen have some excuse, such as the illness of themselves or their families, I hope the Convention will not grant any more leaves of absence.

Mr. VERPLANCK—I am very much indebted for the courtesy and kindness of the gentleman from Onondaga [Mr. Alvord]. I think I have been in my seat as much as any other gentleman, with the exception of the gentleman from Onondaga. I believe he claims to have been here all the time.

Mr. ALVORD—Allow me to explain. I did not know who asked to be excused. I made the objection because I believed it to be my duty.

Mr. VERPLANCK—It would not be in my power to attend. The reason I ask to be excused is that I am obliged to hold a term of the superior court in Buffalo next week. It is a criminal calendar, and I understand there is a jail full of prisoners, and it is very necessary that court should be held. My associate judge, Judge Clinton, is here in this Convention; and it is imperative that I should be absent next week. I trust that the Convention will give me leave of absence; because I do not like to leave without it. I have been in my seat very steadily during the whole Convention; and it is not for my own purposes, but for public purposes that I desired to be excused.

Mr. ALVORD—I understand there are ninety-eight lawyers and about sixty judges in this Convention. I do not know how many of the judges who hold terms of their courts, or how many of the lawyers have causes on the calendar, but if they are all to be excused I am rather inclined to the opinion that there will not be a quorum. I trust we will hold gentlemen to their responsibility. If they permitted themselves to be elected as members of this Convention and took upon themselves the oath of office to perform their duties, they should make everything else subservient to those duties.

Mr. M. H. LAWRENCE—When we look around it does seem as if the remark of the gentleman from Westchester [Mr. Greeley], that this Convention would come to an end by natural decay, was correct. As the gentleman from Onondaga [Mr. Alvord] remarks, we have scarcely a quorum here now. If we have made up our minds that we cannot do the work that the people sent us here to do let us go home and allow another Convention of delegates to be called. It has been remarked that we have got a hundred lawyers in this Convention. I am willing that all the lawyers shall talk as long as they please. It is well understood that lawyers have the ability to talk. I am willing that they should have that privilege; but now let us go to voting, and I, for one, believe we can yet finish up so as to adjourn by the 10th of October, if we will only stop this everlasting talk, talk, talk! I am ready and will-

ing to vote upon any question that is brought before this Convention. I hope we will not excuse gentleman any longer.

Mr. KERNAN—I expected it would come to this about this time, that the laymen, who have read speeches on all earthly questions, and brought in all sorts of resolutions, and kept us from voting, when they found that we have wasted our time, would talk about lawyers. The record will show what lawyers have talked, what laymen have talked, and I would appeal to it.

Mr. LEE—It is to me a very ungrateful duty to be called upon to refuse what, under ordinary circumstances, would be but a very reasonable request on the part of the gentleman from Erie [Mr. Verplanck]; but if the granting of these requests for reasons which, under ordinary circumstances, should be conclusive, shall tend in its results to the subversion of this Convention, it then becomes a very great question how it shall be decided. There is nothing, certainly, that would be more disagreeable and unpleasant to me than to vote to refuse a leave of absence. I can see that it is very important. It might be said to be of almost indispensable importance, that the gentleman should be excused in order to discharge his duty in Buffalo. But the fact still remain that the Judge, in receiving his nomination for a place in this Convention, held that position, and he could foresee the obligations that would continue to rest upon him, and that they were to come in conflict possibly with duties that he was called upon to discharge here. Now while I shall feel compelled, except in cases of sickness, under existing circumstances to vote against the request of any gentleman to be excused, I beg gentlemen to understand that it is not from any indisposition to grant the request; but, as I said before, if the tendency of this is to subvert the object for which we, as a Convention, have assembled here, I feel bound to do what I can in order to retain a quorum, that the business of the Convention may proceed.

Mr. FOLGER—I move the previous question.

Mr. VERPLANCK—I will withdraw my request.

Mr. MERRITT—I offer a resolution:

The SECRETARY read the resolution, as follows:

Resolved, That the Committee on Revision be instructed to amend the article on the "militia and militia officers" as follows: strike out the words in the sixth line of the third section, "the Governor," and insert the words "and he," and strike out all after the words "major-general," in the seventh line, and insert the following: "All officers responsible for the military property or funds of the State, shall give such security for the faithful execution of the duties of their respective offices as the Legislature shall provide."

Mr. MERRITT—I ask unanimous consent for the consideration of the resolution at this time.

Mr. VERPLANCK—I object.

Mr. BELL—At the request of the Stenographer. I ask leave to present to the Convention the bill of F. J. Warburton, for transcribing testimony taken before the Canal Committee, and ask that it be referred, with a similar bill of copyists em-

ployed to transcribe the testimony taken before the Senate Committee on Canal Frauds, to the Committee on Contingent Expenses.

The bill was referred to the Committee on Contingent Expenses.

Mr. GRAVES offered the following resolution:

WHEREAS, The united efforts of this Convention have failed, up to this time, to complete the work which the people require them to perform; and

WHEREAS, Some doubts have arisen whether this Convention will be able to amend and complete the Constitution in all its parts so as to submit it to the people in time for the full and careful examination which so important an instrument demands; therefore

Resolved, That a committee of ten be appointed from the members of this house, to look over the amount of business now pending and yet to be done by this Convention, and ascertain whether, in their opinion, the Constitution can be properly amended by due deliberation and consideration in time to submit it to the people at the coming election, and whether, in their opinion, an adjournment is necessary; if so, when to be made, and to what time to adjourn, and report to this Convention with all convenient speed.

Which was laid on the table.

The Convention again resolved itself into a Committee of the Whole on the reports of the Committees on the Finances of the State and the Committee on Canals, Mr. SMITH, of Fulton, in the chair.

The pending question was announced on the amendment of Mr. Lapham to section 19 of the report of the Committee on the Finances of the State.

Mr. LANDON—I ask the indulgence of the committee for a few moments, while I refer and reply to the remarks of the gentleman from Kings [Mr. Barnard], in which he reflected upon the character and action of Mr. David P. Forrest, of Schenectady, formerly a clerk of the canal contracting board, and now an inspector of State prisons. The gentleman from Kings [Mr. Barnard] read extensively from the evidence reported to this Convention by the Senate investigating committee, and upon a part of that evidence he based the charge that Mr. Forrest, while clerk of the canal contracting board had corruptly erased, or permitted the erasure of the name of a supervisor from a bond accompanying a bid of one Peter Dunn, for work on section 2 of the Genesee Valley canal. He charged that that erasure was made in the interest of one George Lord, a competing bidder, and for the purpose of having the bid of Mr. Dunn declared informal, in order that the work might be awarded to Mr. Lord. If that charge, sir, were true or if I had the least suspicion that it might be true, I should remain silent. But I have examined both the evidence and the bond, and I am entirely satisfied that the charge is wholly untrue. Since the testimony has been reported to this Convention, from which the gentleman from Kings read, other testimony has been given tending to show that the signature of the supervisor was never affixed to the bond. Through the courtesy of the officers having the custody of the bond, I am now permitted to exhibit it to the Convention. I hold it in my

hand. It is manifest from the bare inspection of it that it never was signed by the supervisor. The place where the signature ought to be is as clean unstained, unscratched, and as pure as blank white paper well can be. I invite the inspection of it by the gentleman of the Convention. It is plainly manifest that it was never signed. The keenest scrutiny, and the most delicate tests known to science, will fail to detect the slightest traces of a pen mark. Now, I concede, sir, that some evidence was given before that committee tending to show that it was signed, but, if any one will look at the bond, he will see that in the body of the instrument, the name of the supervisor was written, and I am informed that it is in the handwriting of the supervisor. The supervisor himself was not examined by the committee. After the lapse of three years, sir, it might very well happen that those who had seen the supervisor write his name in the body of the instrument might labor under the impression that they had seen him sign it. I hope, if any gentleman has any doubt in regard to the matter, he will inspect it, and satisfy himself that the paper is identified by the initials of the chairman of the investigating committee. Examine it carefully. It may be easy, perhaps, to disprove a particular charge, but not so easy to remove the prejudices that may have arisen while the charge was believed. Such prejudices in regard to Mr. Forrest, I am satisfied are most unjust. He is my neighbor and my friend; I have known him long and well. I believe that no man has served the State more honestly and more faithfully than he. I believe he is utterly incapable of defrauding the State. Besides, sir, he has none of those evidences of wealth which usually accompany its corrupt acquisition. I know how simply and inexpensively he lives; he has but little in this world except his good name, and this is justly dear to him. And, sir, since this charge against him, as cruel as it is false, has been made a part of the permanent records of this Convention, I thought it no more than right that the explanation of that charge should also be made a part of the same records.

Mr. ALVORD—When the committee rose last evening we had under consideration the amendment offered by the gentleman from Ontario [Mr. Lapham] to the fourteenth section of the article now under consideration, and I had commenced making a few remarks in answer to the gentleman from Orleans [Mr. Church] and in favor of the proposed amendment. I believe I was saying, at the time the motion was made to rise and report progress, that I fully concurred with the gentleman from Orleans [Mr. Church] in regard to the honesty and integrity of the representative from Herkimer, in the Convention of 1846, Michael Hoffman. But, sir, I knew, and I presume that the gentleman from Ontario knew, that Mr. Hoffman was obstinate and self-willed, and as he grew older was affected with an infirmity which finally carried him to his grave. But it was so torturing that he was to a certain extent a misanthrope, and upon questions so important as that which was under consideration in the State he was apt to go to extremes beyond that even of the most devoted of his followers. I say that in

1842 a state of things, financially, existed throughout this country for a brief period of years which rendered it proper on the part of the State officials, for the time being, to refuse to put any more of the indebtedness of the State into the market for the purpose of creating funds to go on with the improvement; but that could only be done temporarily. The facts are, that in 1843, within less than twelve months from the time of the stoppage of the works, the financial position of the State of New York was recognized as sound, and her stocks were above par in 1844; they were above par in 1845, and in 1846 they were above par. The "stop and pay" policy of 1842 culminated in the abandonment of the contracts and the passage of a bill by means of which resulting damages to the contractors were paid upon the part of the State to a very large amount—even to millions of dollars. In addition to that, owing to the manner in which these works, partially completed, were left, they have become utterly useless to the extent of millions of dollars more, so that the actual result of the "stop and pay" policy of 1842 continued beyond the time that it was necessary to continue, and it cost the State over five millions of dollars. It might have been well, sir, it might have been a wise policy to have made haste slowly at that time, to have tided over that financial crisis. It was a financial crisis, a crisis which, while it operates upon individuals, also involves, to a considerable extent, municipalities and sovereignties. But they recuperate rapidly, because it is only temporary in its operation and in its effect. I take it, sir, there was no danger, and that men who had a broad statesmanlike view of this subject would have found there was no danger that the State of New York (which had commenced her operations in 1817, without a dollar in her treasury, to build this magnificent scheme of public works from one end of the State to the other, launching into a sea of expense for that purpose, coming out of it as nobly as she did) was unable, with all the wealth that had been gathered together, with all the population that had increased within her borders, with all the capital and enterprise that her people had shown, to take upon herself this debt, contemplated according to the plan of 1836, for the purpose of the completion of these works, notwithstanding a few financial revulsions might take place during the time they were operating, without any danger of their becoming bankrupt, and without any belief on the part of the public creditors that the State would finally be unable to pay and liquidate her debts. I hope that this committee will come to this simple conclusion; that they are looking at this matter in the light of owners of this property, for the public good, and that it is property of one kind, of one nature, under one control, and kept so far as it regards its amount, in one account upon the ledger, and that therefore it is proper and right that when the question shall be submitted to the people, who are its owners, whether it or any part of it shall be improved, that it shall not be hampered by taking portions of it to submit to the people from time to time in regard to the question of improvement. Now, sir, look at the facts in regard to some of our canals—the Oswego, the Erie, the

Cayuga and Seneca, are all three enlarged canals to-day—all three the same sized locks, the same sized prism, the same depth of water—all three necessarily dependent upon each other to a large extent. The Oswego is nothing more than an arm of the Erie, called the Oswego, starting from Lake Ontario at Oswego, and reaching the main branch of the Erie in the center of the State. It is for the purpose of taking the tide of commerce from both lakes, from Lake Erie proper and at Oswego, from Lake Ontario and carrying them down here to the sea-board. Therefore, so far as it regards the necessity of this improvement for the purpose of taking care of the western trade, it is of as much importance that the one should be improved as the other; and if the people should come to the conclusion that there was a necessity for that improvement they should have the right to pass upon the question of the improvement of the whole, as much as upon any part; because it would be nonsense to undertake to improve one portion of it without improving the other. We will find to-day, in consequence of the fact, that the past of this State has halted in reference to these improvements, that the Erie canal itself is not improved to-day to the extent originally contemplated in that portion of it where it ought to have been improved the first. Another thing, sir, the Cayuga and Seneca opens into Seneca lake, at whose head waters come the accumulation of a large portion of the coal which lies in the adjacent hills of Pennsylvania. The business upon that lake the past year in the article of coal alone was over the enormous amount of five hundred thousand tons. Preparations are being made to have it almost completed, by means of which, directly at the head of that lake, will be brought in addition the bituminous coal which is now brought there almost exclusively, so far as it regards the amount brought within the limits of the State, from Pennsylvania for use. In addition to that there is to be thrown directly upon the head of that lake the results of the great anthracite coal region in the Wyoming valley; and I am not out of the way when I say to gentlemen that this year the amount would be largely increased and next year there will be from 750,000 to a million of tons of coal landed at the head waters of the Seneca lake, for the purpose of being transported upon the canals of this State. We are to look in the future for a large increase of the volume of freight through our canals, by reason of the necessity for the use of coal by the people of our State. It is to increase rapidly and largely in the future; therefore, sir, when it may become necessary to improve and increase the capacity of the Cayuga and Seneca canal, it is at the same time necessary, and for the same purpose, to improve and increase the capacity of the Erie canal, or of the Oswego canal; therefore, there is, so far as it regards, at least, these three works, a necessity that when the question of the improvement of one of them shall be submitted to the people, whether they shall be improved or not, that they all shall be submitted together. I for one, sir, believe, as I stated last evening, that the people of this State who are to pass upon this Constitution in the first instance, and are to pass in the second instance upon any application of this kind, are fully and

entirely competent, without the necessity of putting any drags in the way of the action upon the part of the people. It looks to me, sir, not so much in the light of undertaking to protect and guard the interests of the people, as in the light of transferring this apparent doubt in regard to the honesty of the legislators, over to the people themselves. We begin to doubt whether the people are honest—our creators—whether they are honest. Why, sir, I do believe in the intelligence—in the directness of action upon the part of the people; and I am willing at all times, and under all circumstances to submit anything, no matter what it may be, if the importance of the occasion requires, to the judgment and candid reflection of the people of the State of New York. I care not, sir, whether it is large in volume or small in compass. I think that they will have knowledge, that they will have discretion, that they will have honesty enough to look at it in all its parts; and if they find that they should condemn it, to condemn it whether it shall be made up for the entire system of canals, or one single object of the canals. Now, sir, the necessity may come, as I have said before, for this improvement of these three particular canals. I am not now going to argue the case again, that in my opinion it has already come, because the Convention have passed over that matter and we have come down to this point in the argument. No one who has spoken upon this floor has undertaken to say, as his deliberate, candid judgment, that the time may not come when it may be desirable to improve some of these canals. Why, sir, under the terms of the fourteenth section you have got to submit only one single question at each subsequent election. If you find it is necessary that these canals should each and every of them be improved, if you undertake to do it under the fourteenth section you must take three years. You cannot do it any quicker. Otherwise you have got to go through two Legislatures in order to submit an amendment to the Constitution itself. And I wish to repeat again what I said last night, that I should suppose that the expression of the people of this State, as developed in the operations immediately subsequent to the Constitution of 1846, shows that that is need- less, so far as it regards the expense and its operation upon the industry of the people of the State of New York. I charge that the Constitution of 1846, by this construction given to that fourteenth section, cost the people of the State of New York, so far as it regarded the improvement of their canals, which was finally done under the amendment of the Constitution of 1864 over \$500,000 for the expense growing out of that matter—aye, sir, more than that. It gave rise to the celebrated nine million bill, and to all the expenses entailed upon the people of the State by means of that operation. Contracts were given out and were declared unconstitutional by the courts of the State; and after that the Legislature was besieged until they granted, over and over again, untold thousands of dollars to men who had taken contracts under that nine million bill, by way of paying them the damages which would accrue to them in consequence of the abandonment of the contracts under that decision

of the courts. Notwithstanding that fact, sir; notwithstanding all the odium, all the opprobrium that was thrown upon the canal system of the State, growing out of that operation, upon the part of the Legislature, the people, just as rapidly as they could, under the requirements of the Constitution of 1846, to wit, in the year 1854, put before the people, and they passed an act virtually and substantially indorsing the scheme of 1852, which was then by the courts decided to be unconstitutional. Now, let us in the future avoid anything of this kind. Let us give to the people—who certainly have got as much wisdom, the great collective mass of them, as there is in the one hundred and sixty men who compose this Convention—the right in regard to a work of their own, belonging to them, to say what they may please upon the subject; whether you take it as an entire or as a part. I trust and hope that the amendment of the gentleman from Ontario [Mr. McDonald] will prevail.

Mr. OPDYKE—The gentleman from Onondaga [Mr. Alvord] has made an argument marked by his usual ability and ingenuity; but, sir, I maintain that he has not touched the principal involved in this amendment. The amendment proposes to characterize all the canals of this State as a single interest, so that any single act of legislation, or any proposition relating to them which has to be submitted to the people, for their approval, may embrace all the canals. For example, a bill may be prepared for expending a given amount of money in the improvement of each and every canal, and the whole combined may be submitted to the people for their action in a single proposition. That, sir, is a principle of action to which I object; and I desire to point out to this Convention the practical effect of permitting it by Constitutional provision. I think the Convention will be satisfied that it violates one of the highest principles which should be embodied in the fundamental law of all governments. These canals, or, as under this amendment, I should say *this* canal, with its main trunk and its numerous branches stretching to various localities in the State, is regarded as beneficial to every locality it reaches. It is supposed that any improvement or enlargement of a given branch will benefit the people of that locality I am willing to concede that this impression is correct, that the enlargement of the Erie canal may benefit the people residing in the neighborhood of that canal. So with the Chenango, the Oswego and all the others; their improvement will doubtless confer some benefits on the people of their respective localities. To avoid the danger of a combination of local interests of this kind, the present Constitution has very wisely provided that any law passed shall embrace but one subject, and that any proposition submitted to the people for borrowing or expending money, shall embrace but one object or work, and shall be submitted separately, so that the proposition or the proposed improvement must have merits sufficient of its own to secure the people's approval. I think this Convention will agree with me that, unless a proposed improvement in any given locality has substantial merits that will be pro-

ductive of utility sufficient to compensate the State for the money expended, the people would not and should not sanction it. But when we blend them all together, those living in a given locality where improvements are to be made will support the proposition. So with another and another, until combined, they will be beneficial to the interests of a majority of the people of the State. But how beneficial? Beneficial, not because they have merits of their own, not because they will be beneficial to the State, but beneficial to the people in the special section of the State where they are located. What is the essence of that principle of action? In what does it result? It results in this; that the various localities to be benefited in this combined proposition, constituting as they may, a majority of all the electors, will tax the people of the whole State for their local benefit. It will not promote the interests of the State at large but the interest of a majority of the sections of the State; a majority of the localities; a majority in number of the people. Now, what is the consequence? Obviously this: that the majority tax the minority, not to benefit the State, not to promote the public good, but to promote their own personal interests. The Constitution of the United States, which we all revere, says in its very first clause that its object is to establish justice. The object of this amendment is—I will not say that, but the effect of this amendment will be to establish injustice. That is to say, it will enable the people residing in different localities, by a combination, to tax the people in other localities—not for the benefit of the State but for their own personal benefit. Now, sir, I would like to know if we are here to embody in the Constitution of this State such a principle as that. I know how prone we are to vote as we believe will be conducive to the interests of the immediate section we represent. I believe that rule of action obtains almost universally in legislative bodies, but I hold that it should not obtain here. We are not here to benefit our special localities; we are here to see what we can do to promote the best interests of the whole State. I declare, sir, with all possible emphasis, my conviction that, if we adopt this amendment, we shall remove a constitutional safeguard essential to the maintenance of justice and to the preservation of the rights of the minority—a safeguard that has proved of the highest value to the people of this State. Remove that safeguard by the adoption of this amendment, and you will soon have that beneficent government which the gentleman from Jefferson [Mr. Bickford] extols so highly—a government taxing the whole people for the special benefit of a part. I thought when that gentleman was addressing us that the beneficence of which he spoke was the act of the government putting its hands into the pockets of one portion of its citizens, and taking out the contents, and placing them in the hands of another portion of its citizens. That is a kind of beneficence that I hope will not be embodied in the Constitution of this State. For one (and I claim no higher rule of action in such matters than I concede to others), I shall steadfastly oppose all such propositions, come from what quarter they may, and just as

earnestly if they come from the city of New York as from any other section of the State. The beneficence in government consists in an equal distribution of its blessings and its burdens, and in the maintenance of justice. In our action here we should aim to secure this character to the government of our own State. We have lived for twenty years under the provisions of the Constitution which this amendment proposes to strike out. We have seen no evils resulting from it; on the contrary, we have seen great benefits. We have seen the people preserved from the combined action of interested localities; this "log-rolling" legislation and voting, which will again take place if this amendment is adopted. In saying all this, I again wish to disclaim any unfriendliness to the canals. If a proposition for the improvement, the enlargement, or the extension of any one of them could be shown to be conducive to the best interests of the State, I would both vote and work in favor of it. So with the people. When you satisfy them that a proposition is right, you can always count upon their approval. But I earnestly appeal to the committee not to strike out one of the best, one of the most beneficent provisions of the whole financial article of the present Constitution.

Mr. BECKWITH—I hope this amendment will prevail; and I wish to give a few reasons therefor. I do not concur with the gentleman from Orleans [Mr. Church] in the opinion that, by the adoption of this amendment we, in any manner, act in conflict with what we have already done. The gentleman says that it would be a departure from the Constitution of 1846 in this particular. Well, I think it is. I voted for that Constitution and I have regretted it ever since: and my reason for that regret arises from two or three considerations. In the first place, I think the Constitution of 1846 belittled the governorship and rendered it, instead of what it had been prior to that time, an office of very little consequence to what it had been in this State. I think also, that it belittled the Legislature of this State. It called together a hundred and sixty men and gave them three hundred dollars a year each for their services—as much as to say that those services were of very little importance to the State. I think also that that Constitution has very much lowered the legal profession. It allows a young man to go and study law for only six months, or nine months, or a year, and then to be admitted to practice, when in truth and in fact he is not competent to practice. Now, I helped to build two railroads, and lost all my stock, and yet I made money out of them; I made it not as a lawyer but in consequence of the rise in the value of my property in the neighborhood. I lost my stock, but can I therefore say that the roads were injurious to me? Not at all. But it is said here that corporations can manage these things better than the people can. If gentlemen will look carefully into the history of the construction of our railroads they will find that they have not been built half so economically as the State constructed the Erie canal, with all its stealings. The railroad corporations issued their bonds and sold them at a very large discount, and they paid enormous prices for what they bought, because they bought on credit;

and so the roads were built under all these disadvantages, whereas, if they had been built by the State and the money provided, so that everything could have been paid for in cash, they could have been built for at least thirty or forty per cent less than they actually cost. And again, in these corporations, I believe there is as much loss by mismanagement and frauds, or even more than there has ever been in the management of the canals by the State. I believe, sir, that in these large works of internal improvement, where the State provides the money and provides proper officers to be intrusted with the proper expenditure of the money, such men as we had when the Erie and Champlain canal was built, they can be built cheaper by the State than by any private corporations whatever, in the manner in which corporations have hitherto built them. I wish now to make a remark in answer to a statement made by the gentleman from Kings [Mr. Bergen]. He said that it was no part of the duty of a government to engage in mercantile business. Now, I would like to know of that gentleman or any other, if the State of New York has ever been engaged in mercantile business, that is in the buying and selling of property, except perhaps at your State prisons, which is an absolute necessity. Is the opening up of commerce an engagement in merchandises? I think not. Suppose this amendment should not prevail, how stands it? The gentlemen say that if a work that has merits, be presented to the people, it can be carried. Now, take any of your small canals, the Champlain canal if you please, I think it can be demonstrated that money can be profitably expended to complete that canal and the remaining locks, as contemplated by the amended Constitution of 1854 and the statute of 1864. I believe that money can be expended in that way with large pecuniary benefit to the State; and yet if an act were passed by the Legislature to authorize those improvements and were submitted to the people, the probability is that you could not get before most of the people any clear view of the justice of that act, and that fully nine-tenths of them would be and would remain ignorant of the real merits of the case. Gentlemen will bear in mind that in 1817, an act was passed to build the Champlain and Erie canals, both being included in the one act and treated as one work; and yet they have been lately treated as separate works, although their accounts have all been kept together as if they were one work. Now let an act be passed by the Legislature embracing these two canals within the provision of the Constitution which is recommended by the Finance Committee, and a cry will at once be raised that they are not really one work, although in fact they were undertaken as one work, and you will not be able to get before the people of the State a fair view of the merits of the case. I think, Mr. Chairman, that there is no danger in submitting the whole of the canals as one system, as one work, to the people. They are all parts of one system, they are in fact one, and we may safely so treat them in the Constitution. I think there is no danger in that which the gentleman from New York [Mr. Opdyke] fears, a combination to carry forward any particular measure. No

such measure can be carried unless it has merits; and if it has merits it will be carried. This is shown by the fact that in 1864, an act was passed amending the Constitution in that respect which was approved by the people of this State. The gentleman does not think it just to the State at large, that the people should be taxed for the benefit of local works; as if local works did not benefit the whole State. I say, sir, that the whole State is benefited whenever a work in any particular locality develops the resources of that locality. The State owns some large tracts of land in the northern part of New York. Suppose now, that moneys should be appropriated to develop the resources of that northern country, the people would be bringing their own lands into market at an increased value; and although the improvements made might be "local," would not the State at large be benefited thereby? But suppose the State had no lands up there, and yet suppose that by the building of some railroad, or the aiding to build one, or the building of a canal, a large tract of country rich in mineral resources were developed, would not the State at large be benefited? Is it not a limited view to take of the subject, that because the locality is benefited the State is not, when the fact is that in benefiting that locality you do actually and greatly increase the resources of the State? I cannot concur with the gentleman from New York [Mr. Opdyke] that these local improvements are not beneficial to the State at large, especially when it can be demonstrated, beyond the possibility of a doubt, that they do increase, directly and largely, the wealth of the State. I do not believe in taking limited views of subjects of this kind. In taking such limited views of them as the merchant takes when he casts up his accounts of debtor and creditor to see how they stand, one overlooks the general, and often the most important benefit to the community. I think that in public matters of this kind, we should look to the general benefits that flow from them, as well as to the dollars and cents required to make the improvements, for very often the indirect or more remote benefits far exceed those which are direct. That, in my judgment, is the proper view to take in such matters. Neither can I concur with the gentleman from Orleans [Mr. Church] that it would be unwise to allow the canals of this State to be treated as one system. The fear of combinations to promote different interests is a fear which should not be entertained, because such combinations would be for the most part combinations to promote the general good of the whole people, by developing the resources of the State, and thereby adding largely to its enterprise, industry, and consequent wealth.

Mr. M. H. LAWRENCE—I wish to move the previous question for the purpose of making a few remarks. In the remarks which I made I did not intend any disrespect to the lawyers of the State. In fact, I desire to say that I believe they are the ablest men in the State [laughter], and I want it so understood, and that the glory which redounds shall be enjoyed largely by those gentlemen. With respect to the remarks of the gentleman from Oneida [Mr. Kernan], I have listened with great satisfaction—

Mr. VERPLANCK—I rise to a point of order. It is that the gentleman is not speaking to the question.

The CHAIRMAN—The Chair decides the point of order to be well taken.

Mr. M. H. LAWRENCE—With respect to the question now before the committee, I think I shall vote against the amendment. There is one thing certainly, that I feel grateful for in respect to this question of the indebtedness of the people to this State. I think that in this discussion it has been proved to us most satisfactorily that we are not so badly off as I thought we were by some eighteen millions of dollars. [Laughter.] When I came to the Convention I did suppose that the canals were indebted to the people of the State some eighteen millions of dollars for advances that had been made to them, and I did suppose, too, that in course of time the canals would return to the treasury a large amount of money which would hereafter help to relieve us from certain indebtedness. But I feel grateful to the Canal Committee, and especially to the distinguished chairman [Mr. Lapham] of that committee, for explaining the whole matter so satisfactorily. Why, the gentleman tells us that it is nothing more than the taking of the money out of one pocket and putting it into the other pocket. That, he says, is all there is in this taxation. How enlightened and delighted the people will be to hear that this great taxation, which they have felt to be so oppressive; is nothing more than the natural means of improving the great farm of the State, just as if I were to make improvements on my farm, and that it is delightful to be taxed for such a purpose. I suppose now that the taxes of last year amounted to several millions of dollars, and I know that some people complained of them; but then it was so unreasonable to complain, when the taxation was nothing more than the simple process of taking money out of one pocket and putting it into the other. This simple and satisfactory explanation is one of the fruits of this discussion which has lasted for so many days. Then, again, a committee was appointed to visit and determine the capacity of certain locks on the canals; they came back and announced to us that about so many lockages could be made in an hour, and so many in a day, and the matter was all clear, fair and plain, and I felt satisfied myself that really the Erie canal was blocked up, and that the products of the West were waiting to be transported, and that according to the picture drawn by the gentleman from Erie [Mr. Prosser], it was impossible to transport these products until the committee reported. [Laughter.] But lo, and behold! the gentleman from Onondaga [Mr. Alvord], in his usual cool manner, read from a document showing that a very much greater number of lockages was habitually made there, so that spoiled that picture wholly. Now, I must say, with all due deference to the gentleman, that this contradictory statement of facts is so confusing that this Convention are not in much better condition to vote upon the question than they were when the discussion commenced. I believe in the great ability of gentlemen on this floor. I admit their ability to speak, no matter how long, as lawyers; that is

their business; but I did think that we had talked long enough, and that now approaching, as we are, so near to the end of the session, we should go to work instead of talking. That is all I wish to say. I have the utmost respect for all the gentlemen in this Convention, and especially the legal profession. [Laughter.]

Mr. McDONALD—In addition to the arguments already urged, there is one that has not been stated, and that is that this Convention should at least be consistent with itself. This Convention have resolved that the canal system must stand or fall together. There are delegates here that might wish the laterals cut off from the paying canals. I live on a canal that pays; if you will let the Cayuga and Seneca canal take care of itself alone, we will pay into the treasury nearly a hundred thousand dollars annually.

Mr. HAND—Could it sustain itself were it not for the freight coming through the Chemung canal?

Mr. McDONALD—Yes, sir; and pay into the treasury nearly what I have stated.

Mr. HAND—I doubt that very much.

Mr. McDONALD—I say yes, for the reason that more than three-fourths of the tolls are collected from property that comes over the railroad, and is delivered at the two soft coal depots at the head of Seneca lake. But I am not in favor of separating the canals. I believe in keeping them together as a system.

Mr. SEAVER—I would like to know who the gentleman means by "we," or by what authority he speaks.

Mr. McDONALD—I simply use this mode of speech with regard to the Cayuga and Seneca canal and its finances; but I say that this Convention has put those canals together, and I believe it is right, and that the canals, as a system should stand or fall together, the laterals that do not pay being supported by those that do pay. This the Convention has determined upon. Now, what is the effect of it? It is that, to operate certain canals, it costs the State \$200,000 every year over and above the entire receipts, both on their own line and all other canals. This being the fact why is it not proper that, as you thus consider and treat the canals as one system, you should also treat them the same when they asked for a loan. As a system you load them with a debt—why should they not be allowed to borrow as a system. That is what the amendment proposes; for this reason this amendment should be adopted. But there is another matter as regards my statements and calculations stated last evening. I understand the chairman of the Committee on Finance to say, as a matter of fact, that the canals have not been a paying system, that there have been no benefits, no profits from them, and recommended that I examine my figures. Now, taking into the calculation nothing except actual receipts of money into the treasury of the State, after a re-examination of my figures, I still maintain there has been. I beg leave to call the attention of the committee to Convention Document No. 120, before referred to by me. A resolution was offered by the chairman of the Finance Committee as follows:

Resolved, That the Comptroller and Auditor of

the canal department be requested to report to this Convention a statement of all sums advanced or paid for canal purposes, or on canal debts from other sources than canal revenues, and all sums advanced or paid from canal revenues for other than canal purposes or on canal debts (specifying such purpose) in each year, from 1817 to the present time, and also interest upon each item from the time it was paid or advanced to the present time, stating the items of interest separately from the items of principal.

That is his resolution; and the Comptroller and Auditor have transmitted Document No. 120, now on file, which is a full answer to his resolution; and yet he has not seen fit to refer to it during the whole of the discussion up to this time. There is this answer, as shown by the records by the departments, and on that answer I propose to found my argument. Very few persons have ever been Comptroller, but I find a certain state of facts certified by Thomas Hillhouse, Comptroller, and N. S. Beuton, Auditor and I humbly submit those tables and figures, thus certified, are as worthy of confidence, as reliable, as the *ipse dixit* of an ex-Comptroller. Let us examine these facts. I refer to the document. As I have stated before, Document No. 120 shows that there has been paid to the canals from all other sources in money since 1817 twenty-one million and some hundreds of thousands of dollars, and that is all the money that has ever been contributed to the canals outside of themselves. Every other dollar has come from themselves. Hence the people of this State have advanced only \$21,000,000. Now the same account shows that the treasury of this State has at the same time received from the canals eleven millions and some hundreds of thousands of dollars, which has gone to pay the interest on that \$21,000,000, which has paid the whole interest up to the last day of January, 1867, at five per cent, leaving \$1,806,157 to apply on the principal. These are \$11,000,000, and, at the rate figured by the Comptroller, makes six per cent each and every year on the investment. Now you have your interest, you have the value of the use of your money. What have you left? You have the canal left. What is it worth? It is worth, as I have shown, \$50,000,000—the whole canal system. It produces \$3,000,000 a year net revenue. Well, what does it owe? It owes \$15,000,000, and that's all; so that for the \$21,000,000 you have the canal worth \$34,597,000 over and above all debts. Does not that investment pay? Is not that a profitable investment? You have six per cent on your money, and for your \$21,000,000 invested you have property worth \$34,000,000. Should not that be considered a good investment if you had it in stock? If the canal was a stock company it would now bring you in 150 per cent. But yet the chairman of the Finance Committee says it is not profitable. As to this I beg leave to differ with him and in support of my theory, produce the records of the department, which show that it has made six per cent yearly ever since the investment, and that for twenty-one millions invested by the State, it now has property worth thirty-four millions. These are the facts, and you must judge each

man for himself. The gentleman requested me to review my figures, which I have done. I now beg leave to call his attention to his figures, and I refer to the report of the Finance Committee, of which I understand him to be, as chairman, the author. Let me remark in passing with regard to that report that I find in the *Albany Argus*, which is edited by a member of this Convention, a statement representing that Mr. Van Cott and Mr. Carpenter and two other members of this Convention signed that report. Mr. Chairman they never signed it, as will be seen by an examination of the report itself, and if he had examined the records he would know that fact. They never signed that report, and as I understand them, they do not agree with many portions of its reasoning in any way, shape or manner. Let us, for a few moments, examine some portions of that report. Speaking about the taxes of the State (I refer to page 16) it says the outstanding debt of the State amounts to \$48,351,682.22. Regarding only the debt, which will be raised by taxation I submit the figures do not bear out the assertion. The gentleman has provided by his report that of this sum \$21,407,682.22 is to be paid by the canal revenues. This \$2,418,000, appropriated to a sinking fund yearly, is to pay and will pay that. Is there any doubt that these canals can produce that amount? The report admits this. This leaves only \$21,862,000 to be provided by taxation, and this is the only State debt that is to be provided for by taxation instead of \$43,000,000 provided always that the canal revenues amount to \$2,418,000 a year. Let us look a little further. The report further says, that the debts of cities, villages, counties and towns amount to \$85,000,000. I do not know but that is a fair calculation, and for the sake of argument will take his estimate. But the report further says (page 16), "making a total State indebtedness of \$133,351,682.22." I cannot admit that. I deny that the debt of the towns, counties and villages is a State indebtedness at all. The State does not owe it, never did owe it, is not, as a State, liable for it, and will as a State never pay it. Take a case. A town in a county has certain town expenses, and it sends them to the county board for collection, and the county board levies the amount, and collects it in taxes. Now, is that a county debt because the county board levies it? Not at all. It is a debt which is to be paid by the town. Just the same difference exists between a State debt and a town, county, or village debt, and to call a village, town or county debt a State debt, because it is levied and collected by the State is no more reasonable than to call a debt for town charges a county debt. Again, who holds the bonds in such cases? Why, the inhabitants of the town or village hold them, so that the debt is due to residents of the town or county. The corporations owe certain indebtedness, and to whom? To residents of the town, county or village, as the case may be. To the individuals composing these corporations. The debt is due from corporations within the State of New York, and it is due to residents of that State. Both parties reside in the State. When they have settled up and paid their respective

debts, both parties residing in the State, the State is just as rich as it was before. The money having merely changed hands between citizens of the State. Again he says (page 16), "the proportion of the national debt belonging to this State to pay is not less than \$500,000,000, making a total of \$633,361,682.22." But does the State owe that national debt? Have the United States any power to collect of the State of New York that indebtedness? Not at all. The United States collects of individuals who reside in the State of New York by virtue of their allegiance to the United States. Well, what is the effect of that? Just this: the people of the State of New York own and hold at least double that amount of United States bonds. What is the effect of that? Why, the United States collect \$500,000,000 out of the citizens of New York, and the citizens of New York receive back \$1,000,000,000 from the United States. In that case, is the State of New York any worse off for paying that \$500,000,00 and getting back twice that amount? If I, as a citizen, have to pay the United States fifty dollars, and then go down to New York and take my bond and draw a hundred dollars interest on a United States bond which I own, I have still fifty dollars left, and am I then any worse off than before? Am I not better off by fifty dollars? And if the citizens of New York were to settle finally with the United States to-day, they would have \$500,000,000 more money. Their report then proceeds to consider what the annual taxation is and calculates from that. Let us examine that for a moment. What is the annual taxation which is to pay these debts, and when are they to be paid? The gentleman knows when he looks at the record, that the debts of towns, villages and counties are about all to be paid within three or four years, and yet, he takes those debts up and extends them as if they ran forever. That is the idea carried by the report. Not having examined, I do not deny that his basis of calculation, as a matter of fact, standing alone, may be correct. I admit for the present that the direct tax of the State is what he states it to be, but after you collect it, where does it go to? Why, it goes right back into the pockets of the individuals of the State of New York, and the State which we are here to represent, is just as rich as before, and just as able to pay any further indebtedness incurred. The report (page 17) then proceeds to state the amount of internal revenue and the amount collected by tariff. This internal revenue tax is collected of every man who has over a thousand dollars net income, and if a man has a thousand dollars net income, he, at least, is able to pay his taxes and cannot claim to be poor. He is pretty well off, so that I beseech the gentlemen of the Committee on Finance not to ask any more sympathy for the "poor" on that account.

Mr. BARTO—Am I to understand from the argument of the gentleman that he thinks that the boys who were all day in the garret swapping jackets made money? [Laughter.]

Mr. McDONALD—No, sir; nor did they lose any. [Laughter.] When they came out of the garret they had the same jackets and were just as rich as when they went in; and the State of New York, when it pays the debt, will be richer

by \$500,000,000, than before. [Renewed laughter.]

Mr. BARTO—Then the more we are in debt, the richer we are.

Mr. McDONALD—No, sir; but if we owe less than is due us, when we settle up and all the debts are paid on both sides, then we will be richer than we were before. That is what I claim. The report on finances, through its chair man makes up a great statement of the indebtedness of the State, and says that it requires three hundred thousand millions, at six per cent, to pay it. Now, all I wish to say to the gentleman on that point is this: If he wishes to make up a statement that will be alarming and may be used as a taxation scarecrow, all he had to do was to go to work and find out the private indebtedness of every man in this State, and, without saying anything about where or to whom it is due, or how much is due or owing to them, exhibit it as a portion of the debt of the State. If he were to do that he would have fourteen hundred thousand millions of dollars [laughter], and he might thus make a very brilliant exhibit and parade it all over the State. This would be quite as reasonable as what he has done; for the debts that are due by towns, villages and corporations have no more to do with the debts of the State of New York than have the debts that I owe, or that are owing by any company or partnership to which I may belong. Let the gentleman, when he talks about the State and its debts, talk about it as a State; and when he makes up accounts, let him make up both sides of the ledger, and not the debtor side only, and he will come nearer at the truth.

Here the gavel fell, the speaker's time having expired.

Mr. MAGEE—I rise with the hope that I may be able to submit some suggestions which will tend to lead us through the mist and fog which surround us. We have spent much time in earnest discussions and disputations in a fruitless endeavor to ascertain and determine our true financial condition. Gentlemen on both sides, my friend the chairman of the Committee on Canals [Mr. Lapham] and the chairman of the Committee on Finances [Mr. Church] with their friends, each contending with great earnestness to produce different results, no doubt think they are right, and they are right if they have adopted the proper stand point. The difficulty appears to be that we commenced at an early period and have proceeded upon a deceptive theory of finance. We have anticipated the revenues of the coming year for the expenditures of the present. The result has proved that we have been continually involved in difficulty. Our anticipated income fell short, while our intended expenditures exceeded our estimates; we have gone on and by further anticipations of this imaginary income, mortgaged the anticipated revenues to public creditors. The result proves that we have been continually borrowing from one fund to replenish another; borrowing again to replenish that which has been depleted, and then resorting to taxation to make up the general deficiency. Our public officers, in order to produce harmony upon the face of these reports, have exhibited

forced balances; thus we find such conflict as appears in the document before us. This I believe to be the true cause of the difference which appear to exist in the minds of the committee. In early life I adopted a similar policy, anticipating the income of next year for the expenditure of the present. In other words, counting my chickens before they were hatched. I found myself involved in financial difficulties. My balance sheets could not be made to harmonize at the end of the year without forcing them. My cash was always short. Discovering the cause of my difficulties, I adopted the more wise policy of realizing income before I expended it. Since that I have found little difficulty in managing my funds or in balancing my ledger. Now, sir, I suggest to my friends that they adopt the mode of settlement common in the rural districts—and “jump” their accounts. I do not think it makes much difference which side is found the debtor or creditor, nor do I believe that it is material whether the amount is called one million, five millions, or eighteen millions, because I am quite confident the first dollar to pay it will never be found in the treasury. I have heard the name of an old friend, a compatriot, referred to here in a disrespectful way. I was associated in public life four years with Michael Hoffman; I sat at the same table with him for three years; I knew him intimately; I esteemed him. He was, to be sure, eccentric and peculiar, and inclined to radicalism. I did not concur with him in all his views, yet I regarded him an upright man, kind-hearted, good impulsive, with a high standard of intellect and integrity, and I regret that his name should be alluded to here in a disrespectful manner. He is censured for what is called “the stop and pay policy” of 1842. Now, sir, I was familiar with the financial history and embarrassments of that year, both State and individual, when many of the States of this Union fell into bankruptcy and adopted repudiation. It is said that the means could have been realized to progress with public works, and that our stocks would have found a ready market. Now, I assert, sir, that our stocks were in discredit; they were sold in the city of New York as low as sixty-five cents on the dollar. I know the fact because I purchased them at that figure at private sale. I do not know that they were sold at the public board at that figure. I know that the price ranged from March, 1842, through that year, at less than ninety cents on the dollar, and if my recollection serves me right they did not attain par until about the end of the year 1843. I came here, amidst the panic which prevailed, to aid, as far as I could, in the protection of the State credit, impelled, perhaps, more by self interest than by patriotism. Mr. Collier had just retired from the office of Comptroller, and Mr. Flagg had succeeded to his place. He informed me that he had not funds to meet the interest of the State debt which became due on the 1st of April, and that unless his friends would come forward and lend liberal assistance, the State would fall into discredit. The canal commissioners' drafts drawn for work which had been performed were outstanding and unpaid. I came forward and advanced to Comptroller Flagg, through the bank

with which I was connected, \$100,000, upon the Comptroller's bond bearing seven per cent interest, payable twelve months after date, with the agreement that the estimates which had been and were about being made for constructing seventeen locks on the Chemung canal should be paid from this advance. The contractors upon that work had procured funds from the Steuben County Bank—their paper was under protest and could not be paid until they realized what was due to them from the State. I differed with my friend, Mr. Hoffman, in his policy of stopping the public works. I foresaw then what every man has since learned—that the damages claimed by the contractors for stopping their progress, for dilapidation of the work which was under way and the decay of the materials, etc. would exceed or equal the sum actually required to carry those works to completion. To that cause may be attributed, in part, the large expenses charged to the construction of the Genesee Valley canal. I proposed to Mr. Hoffman, as a measure of relief, that the taxes upon banks and other corporations should be diverted and paid directly into the common treasury of the State, which tax, at the rate of one per cent, would produce for the treasury the sum of about \$4,000,000 annually. By way of illustration I represented to him the Steuben County Bank, its capital \$150,000, about \$40,000 of which belonged in Canandaigua, \$5,000 in Rochester, \$5,000 in Dansville, Livingston county, \$10,000 in London, England, \$5,000 in Albany, \$10,000 in Rhode Island—the residue scattered in small sums among the several towns of Steuben county, of which about \$14,000 was held in Bath, where the bank was located. By the policy adopted for taxing banks, myself and neighbors received the benefits of the taxation upon the capital of other people. I regarded this wrong in principle, and argued with Mr. Hoffman that the taxation upon incorporated capital should go, as it belonged in all parts of the country, and diverted from its natural position, to the common treasury of the State. Taxed as it then was and still is, it served as a corruption fund for the people of the localities wherein the institutions were located. We would vote large sums for all sorts of improvements, proper and improper, because the banks paid the tax. The moneys were improvidently and, in many cases, dishonestly used. We, the people, paid but little taxes, knowing this fell upon the banks, neglected our duties, and paid but little attention to it, consequently the mass of non-tax payers became corrupt and demoralized. I asked Mr. Hoffman why the property-holders of the city of New York, with their immense incorporated capital, should have the exclusive benefit of the taxation, upon the capital concentrated by legislative action in that locality from all parts of the country—a large portion of it from Europe—to exempt them individually from taxation; that is to reduce the tax upon their own property. Mr. Hoffman became a convert to my doctrine, and prepared a voluminous report with a bill to carry out the measures which I recommended. The thing got out. Gentlemen from Albany, Troy, Schenectady, and other parts of the country came to Albany and forced themselves upon Mr. Hoffman, and alarmed him as to the consequences

politically, of so radical a change. Mr. Hoffman backed down and did not present his report, but resumed and carried his "stop and pay" policy. I now recommend for the consideration of this committee that we relieve ourselves from our present embarrassments by inducing the Legislature to so revise our tax laws as to divert the tax from banks and incorporated companies to the State treasury; that the tax should be fair, liberal and uniform, and that they should be exempt from all other taxes. I do not care if you charge them two per cent, or even much more upon their capital. The adoption of such a measure will enable us to pay our debts including the bounty loan, carry forward all necessary improvements and relieve the people from further taxation for all State purposes, and arrest the progress of demoralization, and repeat the recommendation that we settle all present differences by "jumping" accounts, wiping out old scores, closing old books and commencing anew upon the financial basis which I have suggested.

Mr. FERRY—I am opposed to this amendment. I believe its practical operation if it could be adopted, would be bad. I do not imagine, however, that the expression of my simple opinion would have much weight with this Convention; so I mention another reason which I hope will be more potent. This amendment proposes an innovation upon the safeguards of the present Constitution. To that I am opposed. Perhaps it may be a weakness, but I confess that I have a species of reverence for the barriers in our present Constitution which stand in the way of creating debts. I believe, too, that the people generally share this feeling with me, and would look upon any action tending to impair the Constitution in this respect, as very unfortunate indeed. I simply want to state this fact and call it to the attention of members of this Convention. If we were to break down those barriers I should certainly feel that we had done a very unwise thing. I may add that I have followed very generally the Finance Committee in their report, so far as they are warranted by the present Constitution. When they proposed to go beyond that, I parted from them. I hope now that the especial friends of the canals will not see fit to attempt to impair the present Constitution in that respect. Let that be a sort of common ground upon which we may meet and compromise our differences of opinion.

Mr. HALE—I hope that the amendment proposed by the gentleman from Ontario [Mr. Lapham] will be adopted. I do not see how the general question of finance or of the management of the canals arises upon this proposition. It is a simple question as to the manner in which the question, whether they will incur a debt, or will be taxed for public improvements, shall be submitted to the people. The amendment of the gentleman from Ontario proposes to give the people power, by ratifying a law proposed by the Legislature to provide for the improvement of the canals or any of them, or for some single work. The objection made to this amendment is that it countenances a species of "log-rolling," as it is termed. Now, Mr. Chairman, what is this evil which is here characterized as "log-rolling." Perhaps the

etymology of the word will not throw any light upon the subject, but as I understand it, it is an evil which exists to some extent in the Legislature, and consists in members agreeing to vote upon certain questions, not upon the merits of those questions themselves, but upon the merits of certain other propositions. A gentleman from one county for instance, wishes to incorporate a company, or to get State aid to build a railroad; and a gentleman from another county wishes an appropriation for a new Capitol. The gentleman who wants the railroad says to the other, "I will vote for an appropriation for the Capitol if you will vote for one for the railroad." That is the kind of arrangement which is sometimes made between members, and which is termed log-rolling. Now, as I understand, the amendment proposed by the gentleman from Ontario [Mr. Lapham] does not countenance, or give any occasion for, any operation of this kind. We have in this State two main trunk canals, the Erie canal and the Champlain canal—with lateral canals connecting with these; and the question before us is not whether it is wise for us to say that these canals are all to be improved, but whether it is worse for us to say that the people shall not at any one election vote for the improvement of more than one of them. Now I am not in any sense of the word a canal man, except as I am a citizen of the State, and as such, believe that the canals have contributed to the greatness of the State. The county that I represent is not upon the line of any canal, although it is somewhat more benefited by the Champlain canal, than by the others; but suppose now that the interest of the State required the enlargement of the Champlain canal and at the same time required the enlargement of the Erie canal, would it be right that we, who are more directly interested in the one canal, should be compelled to see its improvement postponed for that of the other? or, although equal demand may exist for the improvement of both, that the people should not be permitted to say at any particular time that both should be improved, but should be obliged to give the one a preference over the other? I anticipate no danger from this amendment. I do not think that it is taking down any barrier to the creation of debt—any barrier which ought to exist. I do not believe that the people of this State are going to vote for a general enlargement of all the canals, when they do not desire such enlargement, because such question is submitted as to all the canals, or because they cannot vote separately as to each particular canal. I believe that the people have intelligence and capacity enough to determine whether canal improvement or enlargement shall or shall not be general. It is a great mistake, Mr. Chairman, to suppose that the interests of any or all the canals in this State can command a majority of the votes to the disadvantage of the other interests of the State. The people of this State, as a whole, are not particularly interested in any canal, nor are they interested in the canal system any more than in any other system which tends to the benefit of the State. There is no danger, therefore, in permitting the Legislature, if they shall see fit to do it, to submit to the people of the whole State the question

whether more than one canal shall be improved at one time. If there is any such danger I am unable to see it. Now, Mr. Chairman, in advocating this amendment, I do not say that I am in favor of the enlargement of the canals of the State, or the enlargement of any of them. That question does not arise here. I am opposed to the inauguration, by this Convention, or by the people, at present, of any particular system which will increase the debt of the State. I am also opposed to putting into the organic law of the State a clause which will prohibit the people from voting for the improvement of more than one such work at the same time. Objections have been made on this floor to this amendment on the ground that it will aid local interests at the expense of general interests. I claim, Mr. Chairman, that this is an amendment which, so far from favoring local interests, discourages them so far as they would be at the expense of the whole people of the State. For these reasons, for the reason that I think the prohibition as it exists in the present Constitution and as proposed by this section, is an unwise one, which cripples not only the Legislature but the people of the State, I am in favor of the amendment proposed by the gentleman from Ontario [Mr. Lapham].

Mr. KYAKTS—It seems a little hard, Mr. Chairman, when, in every form and with every degree of firmness, all parties avow themselves friends of the canals and friends of the people, having the continued control and management of the canals, and when, further than this, from the beginning to the end of this debate the canal system of the State is spoken of as one entire thing, that it is not to be judged as an independent work, and thus what seems unprofitable or unpopular be left to its fate, and only what is profitable and popular saved and cherished, and that when it is proposed to carry out these ideas by allowing the State itself, in the capacity of its Legislature, and the people themselves, in their primary capacity, to deal with the canal system as an entirety, then it is discovered that they are mere loose congeries of separate and diverse interests, which, when attempted to be united, introduce all the vices and errors of "log-rolling" to sustain and continue them. With what face are gentlemen to maintain their positions thus opposing each other, in this view of the matter? I am sincere in my judgment that the canal system of the State of New York consists of the internal navigation of the State of New York, saving that part of that internal navigation that is carried on upon the Hudson river. I believe that, economically, industrial and commercially the canals are one entire system; and yet we are told that nothing is to be permitted to be done in the name and by the power of the people of this State, except what is done for the benefit of the whole State. What fanciful republic is this in which men live, which is all one whole and has no parts? How is prosperity in any human constitution, natural or social, to be built up except by the prosperity of the parts? Now there is nothing in this amendment proposed by the gentleman from Ontario [Mr. Lapham] that in the least touches the principle, or the wisdom of this

scheme of general enlargement and improvement. It is simply that this Convention should declare that the people of the State may have an opportunity to deal with the substantial facts and general interests of the canals of the State, as they come up for their consideration, and as shall seem to them wise.

Mr. RATHBUN—I desire, Mr. Chairman, to say a very few words upon this question. The same question was substantially presented upon the amendment of the gentleman from Erie [Mr. Verplanck], some days ago, and the Convention, with the question thus fairly and squarely presented, voted it down. There seems to be some evidence of change since that time—

Mr. BELL—Will the gentleman permit an interruption?

Mr. RATHBUN—I prefer not, sir. I say that there are indications that perhaps a still greater change is to occur in the proceedings of this Convention, before we close our deliberations, upon this article in regard to finance. Now, it seems to me that we have been led along step by step, while we have, at the same time recognized the fact that we were being misled. The Committee on Canals reported to this Convention that certain improvements and enlargements were necessary and now absolutely necessary, and they brought evidence before the Convention to establish the fact of that necessity, which was the foundation upon which all proceedings of this Convention toward that enlargement, were to be based; and the gentleman from Onondaga [Mr. Alvord] made a speech here a day and a half long—a speech which certainly was long enough, and seemed, in the estimation of a part of the Convention, to be strong enough to establish the fact that it was necessary to make this enlargement and to have it begin at once; and my friend from Ontario [Mr. Lapham] made a speech not so long but equally strong, upon that point to show that it was absolutely necessary that this enlargement should be made; and my friend from Erie [Mr. Prosser] made a speech in which he claimed to have demonstrated that the enlargement was necessary and must be made. We seemed to be on the road to enlargement and improvement, and I was prepared and had said I was prepared to go into it whenever it should be demonstrated that this thing was necessary. I felt for a time that I was under bonds to go in and aid these gentlemen in finding some way in which this enlargement could be made. But then comes my friend from Onondaga [Mr. Andrews] who rises in his place like a young giant and fell upon these long speeches to which I have alluded, and annihilated the whole fabric that they had erected, and I stood here looking for the evidences of the necessity, of which he left not a vestige behind. Yet this Convention had been led along upon the theory that the enlargement was necessary, and they will still go on step by step until the rents are handed over to the canal policy, and if we do not look out, before the second annual Legislature after we adjourn, we shall find that the very enlargement which we have held here not to be necessary, is really “necessary,” and that the debt is already incurred or commenced.

But there is a barrier in the way. The Constitution of 1846 lies across the track in the way of putting additional indebtedness upon the people of this State. It embodies the sentiment of the people, and when violent hands are laid upon it, the people will want to know why. But, says the gentleman from Onondaga [Mr. Alvord], the Constitution of 1846 was a blunder—it was not fit to be adopted, and this particular policy was the most abominable feature of all. Yet when the gentleman turns to the names of the delegates, whig and democrat, that were in that Convention, he will see that on the adoption of this policy there was not a single dissenting voice. There are the names recorded, and if gentlemen doubt that those were able, honest, good men, faithful to the public interests and to the people, let them read the names and they will blush at their own fears or uncertainty on that subject. When or where have the people ever said to any of their representatives upon this floor, “Break down the barrier which stands between us and those who desire to load us down with new debts—to ruin us with debt and taxation?” Where is the man who can say that his constituents have asked him to remove that barrier? But, says the gentleman from Onondaga [Mr. Alvord], this is a blind and bad policy, and it is in the way of the people, it is a bond upon them which restrains them from doing what they want to do. Well, sir, it is very strange that the people have never yet felt the galling of this terrible bond, or at least have never complained of it. They have borne their galling chains patiently and resignedly for twenty years. Now, what does the gentleman from Onondaga propose to do, in order to open an enlarged canal, breaking right through this protecting barrier? He does not propose to abrogate the law; that would not answer; but he proposes to insert in the body of it a provision which takes from it all its vitality and renders it a mere blank leaf. The word “log-rolling” has been used and commented upon here, and some gentlemen do not seem to understand rightly what it means, and although the gentleman from Essex [Mr. Hale] gave a very fair definition of it, yet he did not go back to the origin of it, which is to be found away back in the history of the State, when the land was still new and the great trees, after they were cut down, lay upon the land and had to be rolled up into immense heaps to be burned. One man was clearing land on one side of the way, and his neighbor was clearing on the other, and so they were dotted for miles all along the newly opened roads—mere rough wagon-ways in and out among the stumps. It did not take those pioneers long to learn that a log twenty or thirty feet in length and three or four feet through could not be rolled by one or two men, so they would go out and invite their neighbors, and make what they called a “logging bee,” some bringing their teams to draw the logs together, and others with great handspikes wielded by their own strong arms, rolling the logs up into piles, as if by magic. That is real log-rolling. Now when you take the Erie canal alone, and ask the other parts of the State to vote ten or twenty millions of dollars for its improvement and enlargement,

why, say the Champlain, the Chenango, the Chemung, the Crooked Lake, the Genesee, the Black River, the Oswego, and the Cayuga and Seneca canals, 900 miles in all including the Erie, "we too have a great job that we want to do, and we can't do it alone." Now you have the largest log in the lot, and you cannot roll it without our help; well, we are willing to join in and help you if you will help us. That is log-rolling again, just as practical log-rolling as that other kind which I have described. My friend from Ontario [Mr. Lapham], who was brought up on a farm and has probably attended many a logging bee, understood that very well when he drew this amendment, and therefore drew it broad enough to suit everybody; not a canal to be enlarged or improved anywhere in the State is left out; they are all invited to come in, not singly and alone upon their merits, but so that by a combination of their strength here, they may have matters arranged just as they please. That would be log-rolling, if it was not indecorous to say so. I do not say it; but I do say that the amendment is ingenious, shrewd, and in harmony with the line of policy which has been pursued thus far by the Canal Committee to bore their way through all the obstacles that stand in their way in getting at the pockets of the people. Now, sir, I am opposed to all that. But, says the gentleman from Onondaga, [Mr. Alvord] this old Constitution is good for nothing. It was made in 1846, and in 1854 they had to amend it. How did they amend it? Why they amended it so as to allow the borrowing of \$500,000, and changed in some other parts of the first and second sections of the seventh article, and provided for some other difficulties that the State was then in; but this section, which was section 12 in the Constitution, was allowed to remain as it was, unchanged and unassailed. The Constitution never has been amended in that respect since it was made. A word more and I shall have done. I feel that I have discharged my duty in saying what I have said; and now if gentlemen vote down my proposition, I take no responsibility—that is their business, not mine. I can go home and say to my people that I did my best to preserve this provision of the Constitution—because, in my judgment, that provision in the Constitution of 1846 is worth as much as all the improvements in the Constitution of 1867. That is my honest conviction; and I believe the people will be mighty apt to look at it in the same way and refuse to surrender themselves up to this infatuation of canal enlargement. Now, I want to say a word in regard to what gentlemen may expect next winter, and the winter after. The Legislature will be tampered with, and there will be an effort to convince them that an enlargement of the Erie canal is necessary now; and if that fails next year, the chances are ten to one that in the following year they will be brought up to the stand-point where they will believe that it is necessary, and I believe they will act upon it. How easy it will be, by showing that there is a little trouble here and there on the canals, by letting the mischief, at certain places, get a little worse so that it will cause a little more delay, to get people to believe that the canals must be enlarged. The little Delaware and Hudson canal

with single locks and ninety ton boats, transports more than 2,000,000 of tons annually; while the Erie canal with double locks and capacity to carry easily in each of their boats, two hundred tons, can carry only about 2,000,000 tons.

Mr. VERPLANCK—We have been told over and over again, that the State is in debt, for I know not how many millions of dollars, and nothing seems to give gentlemen opposed to the improvement of the canals so much pleasure as to repeat every time they get the floor, the amount of State indebtedness. It delights them greatly, and if there was no debt they would be the most unhappy gentlemen in the Convention. [Laughter.] They should console themselves with the recollection that this Convention has generated so many guardians of the treasury that hereafter it will be protected. What is this proposition which meets so much opposition from the gentleman who favors the report of the Finance Committee? It comes from the chairman of the Canal Committee, an intelligent, able and honest man who has given the subject as much and perhaps more attention than any other member of this Convention. It is simply to amend this section by inserting the words "except for the completion or enlargement of the canals of the State or either of them." This section has a good many guarantees, and gentlemen should not be afraid of it, even with this amendment. What guarantees has it? In the first place if a law is passed it must expressly declare upon its face its object. In the next place it must provide for taxation to pay the interest, and the principal of the debt to be contracted, and then it must be submitted to the people of the State with the fact before them that they incur a debt to be paid by taxation if they approve the proposition, and the act is to be submitted to the people at the general election, when no other law or amendment to the Constitution is, and when it must stand upon its own merits.

Mr. KERNAN—If a single act may embrace all the schemes, and favor one scheme, what is the object of the section.

Mr. VERPLANCK—I admit that is proper. Various projects in different parts of the State should not be united in one act with the view of carrying the vote of the State. But our canal system is a single system; and when it is necessary to make a loan for canal improvement it would be great folly to confine the act of the Legislature submitting the question to the people to a single improvement of a specified canal. The canals are the property of the people, and we should permit the people to improve two or all the canals at the same time. If the act provides for taxation for improper or unnecessary purposes, and has been improvidently passed by the Legislature, the people will find it out and reject it. I have endeavored to satisfy the committee but have not been able to do so, that the Erie canal needed improvement to-day. I have no doubt of it. I live in a section where this matter is discussed, where the difficulties are well understood. This talk about debt and taxation has been reiterated so often, particularly by the chairman of the Finance Committee, that the question of the improvement of canal navigation has not obtained that hold on the minds of the Con-

tion to which it was entitled. I believe the time will come, and that soon, when not only the Legislature, but the people of the State will see the importance of this improvement, or some improvement of the Erie canal to increase its capacity. Suppose, for some reason, the supply of coal should fail, to the great discomfort of those who are interested in getting coal to their doors and firesides, and it should be found necessary to finish the extension of the Chenango canal, what have you to do, unless the amendment of the gentleman from Ontario [Mr. Lapham] is adopted? You have to go one year to the Legislature, and get your act for the extension of the Chenango canal, and at the next general election submit that to the people as a single project, and wait till another year, no matter how great the necessity, before you can provide for any other improvement. Every thing that does not come within ordinary repairs of the canals of this State must be provided for from year to year, step by step, one thing at a time, and the people are not to be trusted with one complete plan for the improvement of their own property. Yet gentlemen talk about their confidence in the people! Why should they not have confidence in the people? I hope gentlemen who believe some canal system necessary, and desire to have the canals improved, will not be frightened by this talk which has been reiterated so often by the chairman of the Finance Committee about taxation and debt. Why, the gentleman told us last night that the State never had derived, and never would derive, a dollar of benefit from the canals of this State. I wish to quote him fairly. He said the State never had and never would derive a dollar of direct benefit. Yet the gentleman proposes by his finance report to pay a debt which he states at \$66,000,000 out of the revenues of the canals, and to pledge them for that purpose, while he is unwilling to appropriate a single dollar for their benefit. He wants the canal revenues not only to pay the \$21,000,000; but the \$18,000,000, the contingent fund debt and the bounty debt. I hope and trust the friends of the Erie, the Oswego and the lateral canals will not be frightened from their property by this cry of taxation, when the canals will not only take care of themselves, but will take care of the people of the State, and take care of the debts and taxation which may come by reason of any improvements and benefits conferred upon them.

Mr. TILDEN—I do not rise at this state of the discussion for the purpose of renewing it, but simply to say, as an act of justice to my friend from New York [Mr. Evarts] that his proposition which I said yesterday was about the worst that had been offered, seems to-day not to deserve that designation. In one respect, sir, this amendment submitted to-day, seems to claim a superior title. The amendment of yesterday applied to a single case only; this makes a general and permanent rule whereby, whenever, at any time, it is proposed to incur a debt for one canal, that interest may effect a combination with all others claiming similar bounties from the State, in order to help itself through the Legislature. It makes a change in the permanent rule which is to govern in these cases. It makes inevitable that whenever the

Erie canal shall need to be improved and shall apply to the Legislature and to the people for that purpose, it will have to take as riders, all the other projects of like character in the State. Once institute this rule, once give encouragement of this sort, and every one, whether needing improvement or not will come in with its claim; and there will have to be a distribution on every occasion, between the one that really needs and all the others that do not need. Sir, if we were to select any provision of this seventh article, which is peculiarly characteristic of the wise, beneficent philosophy it was intended to embody which contains the essence of the whole theory on which it is constructed; it is that provision which requires, on every such occasion, the fair judgment of the people upon the particular, single proposition, which allows no possibility whatever of a formation of complicated combinations; to mislead legislative bodies, and to stifle the resistance of the people against improper and dangerous measures. The subsequent clause requiring a sinking fund supplied by taxation is the distinguishing feature, the essential element, the main characteristic of the ninth article. And if we are to modify and change and revolutionize them in respect to the chief property of the State in respect to what forms the most frequent and recurring cause for application to the State, for expenditures, we had almost as well strike the article itself out of the Constitution. Sir, as one of the friends of the canals referred to by the honorable gentleman from Erie [Mr. Verplanck], I am happy to announce to him that I am not in the slightest degree terrified—not in the least. I believe that on all proper occasions, due appeal being had to the people, they will do what is right and wise in respect to the preservation of their interests or the improvement of their own property; and I shall be ready myself, on all such occasions, to support every measure really tending to such an object; and I am not afraid to trust those great interests to the pure, clear and undisturbed action of the public mind. I do not think there is the slightest necessity for this degree of distrust of the people which would induce us to require or to allow an opportunity for these combinations between all the different interests within the State for the purpose of forcing through measures which, submitted singly to the people, could not receive their consent. Sir, I think we had better preserve this section as it stands. I trust that will be the judgment of this body.

Mr. RUMSEY—If I understand the proposition contained in the amendment of the gentleman from Ontario [Mr. Lapham], it is simply the allegation of what the gentleman from New York [Mr. Evarts] thinks a simple proposition, that is that the whole canal system of this State is but a simple and naked subject of itself, and should be treated as an object. In my judgment, sir, as in his judgment, except for this discussion there would have been no necessity for this amendment; for I cannot see why on earth the whole of this proposition with regard to the improvement of the canals, is nothing more than the simple proposition to improve the general system which we have adopted. I can conceive of no objection to the addition of this amendment save this one,

that some individual may desire to vote for the creation of a debt which shall improve one canal and not another. But, Mr. Chairman, let us look for one moment. Those gentlemen who are opposing this proposition claim not so much to be the especial friends of the canals as to have an entire reliability upon the faith, honesty and virtue of the people; and, yet, what is the proposition which these gentlemen so vehemently oppose? Neither more or less than a proposition to allow the people, after the action of two Legislatures, selected by that people, and of which they have approved, to indorse a scheme for the enlargement or improvement of these canals; it is to allow the people, after this action of their representatives, to vote directly upon that question. The dear "friends" of the people here are not willing to trust them to do that even after two Legislatures have consented.

Mr. RATHBUN—I wish to say a word to the gentleman if he will allow me. He is mistaken in regard to the Legislature. This section allows the Legislature to pass laws providing for a loan, and such laws must be submitted to the people to ratify, and that is all there is of it.

Mr. RUMSEY—I am content with that. All I have to say is that it is a proposition to submit to the people this question, whether they will allow that loan to be effected or not. I for one have sufficient reliance upon the intelligence of the people to suffer them to do just precisely that same thing. Sir, it is eminently right and proper that these things should be joined together. Gentlemen have alleged that this was the old system of "log-rolling." Upon what principle do gentlemen presume to say that when the people themselves, the only parties directly interested in this matter, sit down at the polls to deliberate upon and give their vote upon the question whether they will do so and so with regard to the improvement of their own property that they are to be charged with "log-rolling?" The term "log-rolling" never should apply to the people. It never did and never should apply to them. It was used when the agents of the people elected members of Legislature, and in violation of substantial rights of the people for the purpose of carrying out their own ends, associate themselves together, and urge on claims that the people themselves would not have approved of. But, sir, the term "log-rolling" can never be honestly applied to the action of the people themselves in their sovereign capacity. It is unjust to use the term in connection with them and their action. It is to the subordinates of the people, their agents in this hall, to whom we can fairly apply the term. Now, I must confess I have listened with feelings of much sadness to the debate upon this subject. I had thought that the people were sufficiently intelligent to take care of themselves and their interests, but I have listened to objections made here by my friend from Cayuga [Mr. Rathbun], and my friend from New York [Mr. Tilden], and gentlemen from other parts of the State, to trusting the people with the determination of these several questions, and I have thought if the gentleman from Orleans [Mr. Church] and these other gentlemen shall pass off the stage of life what on earth will the people do for the want of

some person to protect their interests! Wisdom, if we are to judge from their words and actions, unless they are wondrously mistaken in their own estimate of themselves, would die with them. I regret to see the "crow-tracks" gathering upon their faces, as they are gathering around mine, for I begin to fear that when their final day comes, and they are gathered to their fathers, as they must ultimately be, the people will be left corrupt and ruined!

Mr. ANDREWS—I desire to detain the committee but a moment for the purpose of suggesting whether the same difficulty which is urged against the adoption of this amendment does not also apply to the action of the people in respect to the amendment of the Constitution itself? It is said that if this amendment shall be passed, a combination of separate interests in different parts of the State in respect to the canals will result in the Legislature passing an act authorizing a debt for the improvement of all the canals together, and which, with the same combinations of interests, will result in the adoption by the people of the entire scheme, whereas if the plan of the enlargement related to but a single canal, then that proposed particular improvement might not be ratified by the people. Now, sir, we had an amendment of the Constitution of 1846, but it is charged, and I have no doubt truly, that this amendment provided for the enlargement of the Erie, Black River, Genesee Valley, Cayuga and Seneca, Oswego Champlain canals, and that the object of the amendment which combined the improvement of all these works was for the precise purpose of aggregating all these different interests in support of the amendment as a whole. That was in 1854. That amendment was adopted, as was claimed at the time, and perhaps it may be fairly claimed in part from this aggregation of interests which were protected by the terms of that amendment. Now, suppose this section remained as it is; is not the same difficulty to result, and will it not produce an amendment to the Constitution by the passage of a plan by two Legislatures and then a submission to the people in precisely the same way and for the same reasons that a proposition to contract a debt will be carried both before the Legislature and with the people? One additional guard, as it is called, is that we have the action of two Legislatures and then a submission to the people. By the amendment you have the action of one Legislature and then a submission to the people for their approval. Well, now if a Legislature can be united into a combination at one time of all these interests in the behalf of a project for the enlargement of all these canals, it is reasonable to suppose that a second Legislature can be combined for the same purpose and come before the people with an amendment to the Constitution by the same combined interests which will result in the adoption of the plan proposed. I cannot really see where you are to escape the difficulty at all, because in the one case you procure a proposition through this combination of interests and its approval by the people by the same combination of interests, and in the other case you procure an act of the Legislature in the first instance by this combination, and then an approval by the people through the

same. I do not really see that there is any force in that suggestion, as we all understand that a project for the enlargement of the Erie canal should go, *pari passu*, to the enlargement of the Oswego canal. At least there seems to be a propriety that if you are to allow the people to act on a subject at all, you should allow them to act in respect to both of the projects which are necessary to carry out the single scheme of enlargement.

Mr. LAPHAM—It seems to have become the fashion here to charge every one who advocates a departure from the policy adopted by the Convention of 1846 with a want of fidelity and orthodoxy in so doing. For what purpose are we here? If the Convention of 1846 made no mistakes, what was the occasion of our assembling? Are we not here for the very purpose of altering, in such respects as it may be deemed wise to alter, the Constitution which was then framed? We came here for that and no other. Now, I am not an advocate of the system of "log-rolling" in its legitimate sense, nor am I opposed to the restrictive policy contained in section 14 which is now under consideration. In its general scope and purpose it is wise, and should not be departed from; so far as it restrains the disposition of the property or money of the State to any other than State purposes it should not be departed from. But there is a true line of distinction. The evil intended to be guarded against was the disposition of the property of the State to other than legitimate State purposes; to prevent a railroad in one section of the State combining with a railroad in another section and obtaining a donation of moneys for private purposes; to prevent members of the Legislature who were acting simply as the subordinates of the people in a delegated capacity from disposing of the property of the State without the consent of the people. But when the people are to act and decide for themselves as the proprietors of new farms did in the early times referred to by the gentleman from Cayuga [Mr. Rathbun], in thus acting for themselves, "log-rolling" is beneficial and useful. It did no harm to the proprietors of the farms when they thus combined; it was legitimate because they were doing their own work. Now, all we propose with reference to this class of property which we have resolved to retain as the property of the State by this amendment is to give the people the power to decide for themselves at what time and in what manner and to what extent they will improve or enlarge or increase the canals, and the capacity and usefulness of these works. It is a design and purpose to which the term "log-rolling" could be in no just sense applied, as the gentleman from Steuben [Mr. Rumsey] has so well stated. Now, it does seem to me that the proposition with which I started, that we shall resolve to keep this property as the property of the State, and at the same time resolve that there shall be no use made of the public moneys in improving it is one of the strongest positions for intelligent men to take which could possibly be conceived. There is no sense in it; there is no propriety in it; there is no wisdom in it. There is no danger in leaving to the decision of the people the question whether or not they will im-

prove or enlarge these canals. Mr. Chairman, if the Legislature authorized an improvement, not demanded by public necessity, it is fair to assume the people will reject it. The people will understand that as well as the members of this Convention can understand it. If there should be a combination between the different interests (if they can be regarded as different interests) by which the expenditure upon these portions of the canals which are unprofitable to the State are authorized, the people will take care of all these questions. There is no hazard in the submission of the question to the people, none whatever. I repeat, it is an entirely different proposition from what would be presented for our consideration if the question were whether we were to authorize the disposition of the moneys of the State to other purposes than the State's own use. I do submit that all the fears of danger which seem to be apprehended by the gentleman from reserving to the people the power to decide as to this class of property of the State, when and in what manner it shall be improved are all idle. The reasons which induced the members of the Convention of 1846 to put this general clause in the Constitution do not apply to the cost of improvement of the public works. When we find the fact to be that it became necessary, within a short period after the adoption of this restriction in 1846, to go through the tedious process of amending the Constitution, and as my friend from Onondaga [Mr. Andrews] suggests, to combine diverse interests in order to do it, I ask when we find that to have been necessary, why should we now re-enact that restriction?

Mr. M. I. TOWNSEND—I consider the canal system of the State as a unit. It is a system not now resting as a burden upon this State; whatever it has been in the past, it is now a source of profit, large profit. I look upon the system with no degree of jealousy. I do not believe the people of the State are jealous of that system by which to-day they are realizing a very large amount of money. In listening to the remarks of some gentlemen on this floor it would seem as if the canal system of the State was an evil monster, hydra-headed, which should be fought with every power that we possess. I do not so regard it myself. But, although feeling that the canal system is to-day a source of immense profit and advantage to the people of this State, I think that it is the height of wisdom to regulate the expenditures of the State in regard to that system as they have been regulated by the preceding section of the article now under consideration. But, as the gentleman from Steuben [Mr. Rumsey] has said, I do not think if this Convention should entirely die off, all the wisdom would die with it. In the coming future there may be exigencies that will require a different course of action from what we have prescribed in this Constitution. A majority of the 800,000 electors of the State may believe that more speedy action and temporarily more liberal expenditure is necessary. I do not feel that I am doing great wrong when I say the majority of that 800,000 ought to be at liberty to do what they choose in the exigency which may arise, as they think, for the best interests of the

State. I do not know what prerogatives the gentleman from Orleans [Mr. Church] or the gentleman from Cayuga [Mr. Rathbun] have to say that the people who shall be living in the State of New York five years or eight years hence shall not do with their own what they please. The ghost of Michael Hoffman has to be dragged in here. I do not know what the ghost of Michael Hoffman has to do with the question. I concur with those gentlemen in the most profound respect to that statesman, and I have not forgotten the eulogium passed upon Michael Hoffman by my friend from Cayuga [Mr. Rathbun].

Mr. RATHBUN—I have not alluded to Mr. Hoffman.

Mr. M. I. TOWNSEND—The gentleman from Cayuga alluded to him indirectly.

Mr. RATHBUN—I did not allude directly or indirectly to Michael Hoffman. I alluded to the Constitution of 1846.

Mr. M. I. TOWNSEND—The gentleman from Cayuga may call it the Constitution of 1846, and my friend from Orleans [Mr. Church] may call it Michael Hoffman. I do not care by what name the child is called. It was a very respectable child, one I have admired as much as any man for twenty years. But I have not forgotten, and shall not forget, the lecture which the gentleman from Cayuga [Mr. Rathbun] read to me and the rest of this Convention because we were unwilling to break down the most beneficial provision of the Constitution of 1846—that the electors should have the privilege of knowing the candidates whom he voted for. I remember that lecture, and I shall remember it for a long time. The love of the gentleman for the Constitution of 1846 is a fitful affection. It is a love that is strong and controlling in some of his humors, but utterly gone when that Constitution happens to run counter to his views. [Laughter.]

Mr. RATHBUN—I would like to have the gentleman state on what ground.

Mr. M. I. TOWNSEND—It is because the gentleman the other day was denouncing the Convention when it had refused to vote for the quadrupling of the senatorial districts; and now he is preaching in favor of the same Convention and the same Constitution that he was then so much displeased with. Now I am done with the gentleman from Cayuga [Mr. Rathbun] for the present. [Laughter.] Yet, when I think of it, I wish to refer to the gentleman from Cayuga in so far as he manifests that affection which is always so dear to the eyes and the hearts of all who behold it.

Mr. RATHBUN—I am honest. [Laughter.]

Mr. M. I. TOWNSEND—He is honest but fickle; if the gentleman had been uniform in his affection I would not have said one word. As I remembered that lecture, I could not but allude to it. Yet, I shall, in regard to this question, simply govern my vote by the idea that I have no right to say that the people of the State, five years from this time, or eight years from this time, or at any future day, shall not have the privilege of deciding by a majority of voices what they themselves will do with their own.

Mr. RATHBUN—My friend from Rensselaer [Mr. M. I. Townsend] talks about my love for the Con-

stitution of 1846 being fickle. Now, in the presence of this body, where he and I have been for some months, it seems to me that the last remark the gentleman should have made in reference to me is the one he did make. My love for the Constitution has been undying and unchangeable from the day of its adoption to the present hour. No man ever heard me doubt the propriety or the necessity or the value of the very provision under consideration. It is a part of my religion, and has been and will be whether gentlemen trample it under foot or whether they preserve it as a monument to the integrity and ability of the Convention of 1846, and the wisdom of the people from that day to this.

Mr. M. I. TOWNSEND—Will the gentleman yield the floor for a moment?

Mr. RATHBUN—No, sir; I do not yield; I am in favor of all things that appear to be good and valuable; I am in favor of all things that have proved to be wise and profitable. I was in favor of the single senatorial district system in a larger and wider and a better field. I thought there should be rotation of office in the Senate, and that there should be at all times experienced men there who could take the new members in and advise and direct them until they had learned what their duties were, and were enabled to perform them. That is all I have to say on this subject. I believe I was right then, and I have never found among the people a man who has not indorsed the idea. I have a single word in reply to my friend from Ontario [Mr. Lapham] and but a word. He tells us that this matter of combining these canals as they were combined in the constitutional amendment of 1854, is no "log-rolling." Now, why were these things combined in 1854? By the frank admission of the gentleman from Onondaga [Mr. Alvord] they were combined in order to induce the people to vote for projects which otherwise could not be adopted. The necessity existed to raise money; that debt of \$1,500,000 had to be paid and there was no way to pay it; and in order to induce the people to pay it and amend the Constitution so that the money might be obtained to pay it, they put in all the canals and went to the people with a joint team to "log-roll" for the amendment. Now, my friend from Ontario [Mr. Lapham] thinks that it is not exactly "log-rolling," because that is the people's own business. Well, you can "log-roll" in the various counties in the business of the people. How is it done? Why, a committee sits down to draw a section of a law authorizing a loan of \$20,000,000. It is composed of members of the Legislature from counties in various parts of the State. Now, the committee put down for the Erie canal \$15,000,000 to enlarge it. "But," say the Champlain canal, "we cannot go that; you make no provision for us." "Now, how much will it take to bring your people in support of this proposition?" "Well, you must put in enough to finish up the canal to the large locks, and the original size and design, and then our people will indorse it." "Very well." Now half a million there. How much will the Chango want? She wants her ten or twenty miles of canal yet unfinished to be completed accord-

ing to the original plan. How much will that be? Five hundred thousand dollars more. Very well. Now, will that satisfy that part of the State? Will they come in and support us in the proposition to enlarge the Erie canal for \$500,000? "Oh, yes; that will be satisfactory." So every single canal in the State is put down for some portion of the State funds in order to carry the people of its locality for the measure originally designed for the Erie canal. Then the law being made up they go to the people with it to be indorsed as a loan. It comes before two parties, the people who take no part in the matter, who have no interest but to do what is right and proper on the one hand, and the contractors, workers and managers, who want to get their hands into the public treasury in order to grow rich. The contest is between the two. The farmer follows his plow, and the mechanic works in his shop. They are busy about their affairs. They say, well, the people will look after this and will vote it down. The managers and workers, who are after these sums to go to the Champlain, and the Genesee, and the Chemung, and the Oswego, and the Cayuga and Seneca, are all of them busy to secure the money that is to come to our neighborhood to be expended here and which will benefit us, which will enrich property, which will increase business, which will benefit you in every way. So you must go in, you must swallow all; you must take the great dose, because this little one is the sugar-coating of the pill that will operate most elegantly. [Laughter.] So I say that this is "log-rolling," and that is the way the people are to be cheated by appealing to their sections and neighborhoods. If there ever was any "log-rolling" that is it. It is the most abominable practice that is ever attempted, in my judgment, in the world. I beg pardon of the gentleman from Ontario [Mr. Lapham]. I did not mean to speak disrespectfully of him. But I do abominate it above all things that I ever heard of, or was called upon to vote for or against in my life—I mean nothing personal—this project of getting the people to vote for matters that otherwise they would not touch with a ten-foot pole.

Mr. OPDYKE—I will detain the committee but a single moment. I have been told it is in the power of the people, by combining local interests, to do what we desire to prevent them doing. And the gentleman instanced as an evidence of that fact the amendment of 1854. Now I agree in the correctness of every word he uttered. But that gentleman was careful not to justify the act itself. He did not deny that the policy perpetrated an injustice, that it enabled combinations of local interests constituting a majority of the people to levy taxes, to expend money, and thus tax the minority for their especial benefit. That gentleman did not deny the injustice of that act, and with that innate sense of justice which is stamped on every word he utters he will not deny it. The question for us to decide is whether we shall invite that kind of injustice by throwing open wide the door which will admit of its being carried on. If we do we will lend our sanction to that species of injustice. Let us put in the Constitution an evidence of our abhorrence of

that species of injustice, and then, if two Legislatures and the people hereafter shall vote to perpetrate it, it is not in our power to prevent it. But I beg that we do not invite them to do it.

Mr. BELL—I offer an amendment.

The SECRETARY proceeded to read the amendment, as follows:

Amend by adding after the word "shall," in the fifth line, "provide for setting apart from the net revenues of the canals, or," so that it will read, "and such laws shall provide for setting apart from the net revenues of the canals or impose and provide for the collection of a direct annual tax to pay," etc.

Mr. BELL—It will be seen by those who take pains to look at the section now before us that this amendment is to come in after the word "shall," in the fifth line. It is simply that in case the amendment now pending should prevail, the Legislature can set apart from the net revenues of the canal a sufficient sum to pay the interest and redeem the principal from all advance that may be made, or any money that may be loaned for their improvement, and will not necessarily require a proposition to tax, and that the interest may be paid out of the revenues of the canals. I will only state the question, and let it be considered by the Convention.

Mr. RATHBUN—I rise to a question of order. The gentleman from Ontario [Mr. McDonald] introduced an amendment precisely similar to that, and it was voted down. The gentleman from Erie [Mr. Verplanck] had an amendment of precisely the same character, which was voted down. I submit this amendment is not proper?

Mr. BELL—I would inquire if the amendment of Mr. McDonald was an amendment to this particular proposition now pending, the amendment of the gentleman from Ontario [Mr. Lapham].

The CHAIRMAN—It was an amendment to this section.

Mr. BELL—But not in this connection. I contend it is not the same thing. That proposition is entirely different, because, if the proposition now before us is carried, I think it will be necessary to make a provision of this kind that the Legislature may provide for the payment of the interest of this money from the revenues of the canals, and not from direct taxation.

Mr. VERPLANCK—Will the gentleman from Jefferson [Mr. Bell] withdraw his amendment so we can get a vote first on the other proposition?

Mr. BELL—I have no particular desire where the amendment shall be, but I think it is proper that it should be added. As there are so many members of this committee who think it should be withdrawn, I will defer to their judgment and withdraw it.

The question was put on the amendment of Mr. Lapham, and it was declared lost, on a division, by a vote of 41 to 57.

The question was then put on the adoption of the section, and it was declared adopted.

The SECRETARY proceeded to read the fifteenth section as follows:

Sec 15. Every law which imposes, continues or revives a tax, shall distinctly state the tax and the

object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

Mr. BICKFORD—I move to amend by making the word "object" plural, so it will read "objects."

The question was put on the amendment of Mr. Bickford and it was declared lost.

The question was put on the adoption of the section and it was declared adopted.

The SECRETARY proceeded to read the sixteenth section as follows:

Sec 16. No deficiency loan shall be made by or on behalf of the State, for a longer period than is necessary to enable the sinking fund provided for its payment, to accumulate an amount sufficient to discharge it; and in no case shall such loan be made for more than six years.

Mr. VERPLANCK—I would like to inquire of the chairman of the committee if this is not a new proposition.

Mr. CHURCH—It is.

Mr. VERPLANCK—What is the object.

Mr. CHURCH—The object is this: it is simply to prevent the extension of the outstanding indebtedness by renewing the debt for a longer period than is necessary. We have an illustration of this in the old canal debt of 1846. That debt should have been paid long ago. But it is not due now, I believe, or a part of it at least, until 1878. It seems to me this provision is necessary, when you make a deficiency loan, to prevent its being made for a longer period than six years, because, if a sinking fund is so poor that it cannot in six years make up enough to pay the debt, then we should resort to taxation.

Mr. VERPLANCK—The Legislature should have some responsibility in this matter. They will conduct the financial affairs of the State after this Convention has adjourned, and for twenty years to come, and for a longer period unless at the end of twenty years we have another Constitutional Convention. I do not see the propriety of putting this restriction upon the Legislature. We cannot tell what will happen in the future. The gentleman from Orleans [Mr. Church] sees nothing but debt, taxation, and ruin. Now, why, if in the opinion of the Legislature the payment of a debt should be postponed, and creditors were willing to have it postponed, and the funds to pay it are not sufficient for that purpose, should not the Legislature have the power of postponing it instead of taxing the people, and let the fund accumulate? The people should not be taxed for such a purpose. The provision is new. With all the improvements of the Convention of 1846 it never reached this point. This is an invention of the Chairman of the Finance Committee.

Mr. ALVORD—I am very sorry to disagree with the gentleman who has last spoken in reference to the matters of the canals. Our views have harmonized on this question for so long a time that I regret the difference between us upon this section, which I deem to be eminently wise and proper. It will give us an opportunity at some period in the lifetime of the present inhabitants of this State, if they do not

run any further into debt, to see that what debts we have on hand shall be finally paid off. If the policy of the State of New York in the future is to be, that we are to do no work with these public improvements on the line of our canals until the debts are paid, I want that time to arrive at the earliest possible period, because I believe, and believe sincerely, that the prosperous future of this State is dependent upon the operation and improvement of these public works. The sooner we carry out these improvements the better it will be for the interests of the State. There is one thing I would desire, that the Chairman, should take and make a part of his article; there is one debt which was fastened upon the people of this State by the necessity of preserving their existence. It is a debt which is not a debt of our creation, for the purpose of our immediate special benefit alone, but which results from the necessity of preserving our perpetuity as a people and a State in the future; a debt which it seems to me to be eminently proper should be divided between us and the federal government. I understand of course, that this applies only to the deficiency loan for the sinking fund. But I speak in this connection with reference to another debt, which the gentlemen from Orleans [Mr. Church] has in his original plan provided for, for the purpose of the extension of that debt by the Comptroller. I trust he will take out of this section (which all agree should be stricken out) so much as gives the right of extension, and incorporate in his article somewhere else, authority to extend the bounty debt to 1885. Let those who are to come after us, and who will receive a large share of the benefits resulting from this action on our part in incurring this debt to put down the rebellion, be also permitted as well as ourselves to pay a portion of this debt. We give them a rich legacy, the continued possession of their country, and their liberty, and we should charge them with some of the expense. With these remarks, feeling that this sixteenth section is in the right spirit, I shall have to go against the views of my friend from Erie [Mr. Verplanck].

Mr. RATHBUN—I am very glad this section is about to pass, as I think from appearances I have a right to assume it will. The gentleman [Mr. Alvord] has alluded to our bounty debt. I wish to say a word or two with regard to that. I regard that debt as a part of the national debt. I have no more doubt than I have of any other thing I consider perfectly certain that the United States will assume, become liable for, and ultimately pay that entire debt. It is so manifestly just and proper it should be so that it will be unreasonable to doubt the fact. That debt, as the gentleman remarked, was contracted for the preservation and perpetuity of these States as a government. I insist upon it that debt should be a part of the general debt which should be paid by all the people who have the benefits of the preservation of that government as well as those who were engaged in trying to preserve the government and those who were engaged in trying to destroy it. It would be a punishment, in some sense, upon those who caused it to be contracted. I desire, and I presume every gentleman desires, that the Southern States who caused this debt should

have the privilege of joining us in paying the debt of the general government. They have the benefits of that preservation as well as we do, and they will live long enough. I doubt not, in the present generation to thank God that the Northern people rose up and preserved them from self-destruction, and that they will willingly join us in paying the debt as the only compensation that is to be required of them for the wrong they did. I think it will be well in that view to postpone this debt for awhile until we see whether the general government is disposed to take the loan which properly belongs to it off the shoulders of our people and to assume the payment of the balance of the debt, and if it does not I think we have backbone enough in New York to pay it off ourselves.

Mr. VERPLANCK—The committee will observe that this section applies not only to the loans now existing, not only to the sinking fund now existing, but will apply to any loans which may hereafter be made. I warn the gentleman from Onondaga [Mr. Alvord] that this may become a very dangerous provision in the Constitution.

Mr. ALVORD—I will ask the gentleman whether he understands that this means original loans. It is a deficiency loan, and must be used for the purpose of paying a deficiency existing.

Mr. VERPLANCK—I understand that. What I object to is that when a fund hereafter created is insufficient to pay a present demand the proposition is to tax the people, although the contributions to that fund would in a short time supply the deficiency.

Mr. FOLGER—I wish to ask the chairman of the Finance Committee what he means by a deficiency loan?

Mr. CHURCH—That is the name that has been given to that class of loans for the supplying of deficiencies in the sinking fund.

Mr. FOLGER—Made by law?

Mr. CHURCH—The Constitution authorizes the State officers to make loans upon the credit of the sinking funds in certain cases, and those are called deficiency loans, where the sinking fund is short.

Mr. BICKFORD—I would ask the chairman of the Finance Committee if this loan provided for in the twelfth section is a deficiency loan?

Mr. CHURCH—No, sir.

Mr. McDONALD—There is only one objection to the assumption of this debt by the general government—it will disturb the financial scheme of taxation and take away the only debt that is to be paid by taxation.

Mr. KERNAN—If that is the only objection, I suggest that we do not discuss it at this time. Let us vote on something practical.

The question was put on the adoption of the section, and it was declared adopted.

Mr. BARTO—I have an amendment which properly comes in here; if adopted it will form a new section. I will present it if it properly belongs in this part of the matter under consideration.

The SECRETARY proceeded to read the amendment, as follows:

"The principal and interest of the general

fund debt and the canal debt under the amendment of 1854 and the floating canal debt and all indebtedness hereafter created shall be paid in coin."

Mr. CHURCH—If the gentleman from Tompkins [Mr. Barto] will waive that amendment for the present and let us get through all the sections, then amendments generally will be in order.

Mr. BARTO—I will withdraw it for the present.

The SECRETARY proceeded to read the seventeenth section, as follows:

SEC. 17. The capital of the State is hereby permanently located at the city of Albany, but the building of a new Capitol shall not be undertaken within ten years from the adoption of this Constitution, nor shall any money be hereafter appropriated for that object until the expiration of that period.

Mr. ALVORD—I move to strike out this section. I think, sir, that this is a matter which legitimately belongs to the Legislature of the State, and from time to time they can see to it, whether or not the building of the Capitol is an imperative necessity, and can proceed with the work according to their judgment and discretion. I am opposed also, sir, decidedly and distinctly opposed, to the idea of ingrafting into the Constitution a permanent location of the capital. Circumstances may arise in the history of this State by which it may become necessary even to sacrifice what property the State may have in this locality in order to transfer, for the better convenience of the people of the State, the capital to some other locality. I desire to say in this regard at this time, that I think the people of this State have been laggard in this matter in the past. Here we have to-day a Capitol built in 1808, when the people of this State numbered less than 1,500,000, when the canals had not yet been started, when all our works of internal improvement had not yet developed the resources of our State. It was then a capacious building, large enough for the interests of the people. But it has long since that time ceased in its extent to be what the great State of New York should have as its Capitol; and in 1864, on the floor of this House, I stood up as the advocate then of commencing the enterprise of building a new Capitol. It is a shame and a disgrace, sir, to the people of New York, that there has not been, before this time, not only begun but completed, an edifice commensurate with the dignity, the honor, and the necessities of the people of this State. I believe, sir, that the people of this State are impressed with the idea that this Capitol is not sufficient for the purposes for which it was originally intended. In 1864, under the authority conferred upon me as one of the trustees of the Capitol, in connection with others, with the entire of the business of the war, as connected with the State pressing upon the limits given to the people of this State in their public buildings here, I was, with the other trustees of the Capitol, under the necessity of going outside and hiring rooms to be used as committee-rooms for the use of the Legislature; and very many of the committees, both of this House and the Senate, in every year for the last five

or six or seven years, were obliged to hold their sittings in the room of some member, because of the fact that there was not room enough for them to do their business within the limits of this Capitol. Why, sir, this building is no more than sufficient—even if it was divested of every other use—for the Governor and the military department of the State. To-day we have our military bureaus outside of this Capitol. We have the paymaster-general's office, the quartermaster-general's office, and the bureau of military statistics outside of the Capitol. With what room we have here to-day, with thirty committees in the House, and about the same number in the Senate, we have accommodation for only about ten or fifteen committees. I say, therefore, sir, that in my estimation, the people of the State of New York have arrived at that point of time when they insist that a Capitol shall be built, and built in the shortest possible space of time consistent with an economical administration of the money employed for the purpose, and with the raising of the money by taxation from the people. I trust, therefore, that in any event, under any circumstances, this whole question will be left to the Legislature.

Mr. GERRY—I offer the following amendment:

Strike out the word "Albany," in the second line, and insert in lieu thereof the words "New York," and strike out the rest of the section, so that it will read "the capital of the State shall be and hereby is permanently located in the city of New York."

It might be deemed somewhat singular by any foreigner arriving in this country at the city of New York, on inquiring where the capital of the State was located, to learn that it was situated 150 miles from the great center of the commerce, the wealth, and the population of the State itself. It was located at Albany originally, in order to subserve the interests, at that time, of the interior of the State—being deemed, on account of its proximity to the main avenues of communication with the interior of the State, then chiefly roads, to be more advantageously situated, with a view to the common interests of the people, than New York city, which is now the first city of the United States of America. The capital, of course, was located there long before the canals were constructed, or the present railroads built; but it enjoyed a close proximity to the navigable waters of the various rivers, particularly of the Hudson, the great natural canal of the State, and it was chiefly on this account that Albany was selected as the place in which to locate the center of government of the State of New York. The city of New York has a greater claim to the position of capital of the State than any other portion of it. It pays nearly one-third of the entire taxes of the State; it contains nearly one-third of the population of the State; it ranks as the very first city, not only of the State, but of the United States; and it is situated at the present time, where the means of access to it from every portion of the State by railroad and river communication are ample for the convenience of all concerned in the State legislation. It is, to a certain degree, the embodiment of the enterprise

of the State, and its resources, with which the city of Albany cannot compare, are ample, not only to erect but sustain such a Capitol as would be the pride and glory of the State itself. I can see no reason, therefore, why the capital should, at the present time, be continued for twenty years longer in the city of Albany. It has been here quite long enough; and I think that much of the difficulty has arisen, and many of the causes of the evil name applied to the Legislatures of past years, grew from the fact of their location in the city of Albany, instead of placing them where they should be, in the city of New York; and I therefore ask that this amendment be made at the present time. If there ever was a time in the history of our State when it should be made, now is that time. The city of Albany has not increased in population nor in importance, in any such ratio as has the city of New York. There can be no question about the city of New York occupying the position of the great head center of the State; and I respectfully insist that the change should be made. It is demanded alike by the high position the city holds in the State, and her wealth, her intelligence and her commanding influence.

Mr. BICKFORD—I propose to offer an amendment, if in order. I will read it for the information of the Convention. Perhaps the gentleman from New York [Mr. Gerry] will accept it. I propose to add to his amendment, "provided, the city of New York will build suitable buildings for the use of the State, at the expense of that city, to be accepted by the Legislature."

Mr. FOLGER—Does the gentleman from Jefferson [Mr. Bickford] desire that they should be completed within the lifetime of a man? [Laughter.]

Mr. A. J. PARKER—I am in favor of the motion of the gentleman from Onondaga [Mr. Alvord] to strike out this entire section. I think it is a matter that belongs to the Legislature of the State, and should have no place in the Constitution. That is one reason. Another reason is that there certainly is a most serious objection to the latter portion of this section. So far as the first portion is concerned, the continuing the capital in the city of Albany, that has already been decided by the Legislature. In an act passed recently, it has been permanently established here. Provision has been made for the erection of a new building; appropriations have been made two years in succession, the appropriation for the last year being \$250,000, with which to proceed with the erection of the building. The Legislature have finally settled this question; but as an inducement to their doing so, and for the purpose of putting the matter forever at rest, the city of Albany has expended some \$200,000 in the purchase of property for the extension of the building and grounds, and at this very moment the State officers are making use of the buildings for the military bureau and for other purposes, which have been purchased and paid for by the city. The good faith of the State is pledged not to meddle with this question. The course that has been taken with regard to the city of Albany—the advancement of the money—to which I may add the closing of its streets, conforming to whatever neces-

nities were required for the purpose of a new and large and appropriate building—all this involves a question of good faith on the part of the State, that I am quite sure the Convention will not be disposed to violate. I think, therefore, there are two reasons why we should not meddle with it: one, that it belongs exclusively to legislation, and another, that the matter has already been settled and cannot be disturbed without a breach of good faith. Now, with regard to the second portion of this section, that which prohibits the expenditure of money for ten years to come, in the erection of a Capitol, I think there are many objections to that. Suppose this building should burn down, or be in any other way destroyed, are the Legislature to wait for ten years in the open air before, by the Constitution, any money can be expended, and then for three or four or five years more before it is completed? Is this Convention so to tie up the Legislature that it will not be at liberty to provide for the absolute necessities of the public servants in the discharge of their duties? But, independent of that consideration, is it wise thus to delay the erection of this new building. It has already been said by the gentleman from Onondaga that the public wants demand its immediate erection, that there are no proper places for the Legislature, or for the public offices connected with the State administration; and why should the servants of the public be subjected to this inconvenience, when the State is abundantly able to erect a suitable and appropriate building, one that will accommodate those that have public business to transact there, and that will, at the same time, be commensurate with the power and dignity of the Empire State. Why should it be delayed? Surely the State is not in such an impoverished condition as to demand it. But I do not intend to take up much time upon this matter. I do not think it is expedient to lose time upon a question like this, when our time is so valuable. The very moment you sanction the idea you see to what it leads. Immediately my friend from New York [Mr. Gerry] stands up and throws in this amendment, proposing to make the city of New York the capital of the State. And just as well and with just as much propriety might an amendment be made to locate it in any other part of the State; nay, with more propriety. It has not generally been deemed wise or expedient, in the different States of this country, to locate their capitals at the commercial center of the State. Pennsylvania does not locate her capital at Philadelphia, but at Harrisburg; Ohio does not go to its great commercial city, but to Columbus; and so on, with Michigan and Missouri, and with almost all the States of the Union. They seek some central point that will be convenient of access to the public servants, as they shall come from all parts of the State by means of the railroads that are now spread out everywhere. It has not been thought wise that the public servants who meet to deliberate free from external influences, should go the busy metropolis of the State, surrounded by the noise and bustle that must necessarily exist there, and with the attractions that are continually drawing off the mind from the subjects to which they should be devoted. It has not been thought wise generally

to locate a capital in such places, but rather to select some point in the country of easy access, and there let them meet, away from these influences, where they may be supposed better to discharge their duty. But I refrain from going into any full discussion of that question. It does not belong here. It is not necessary that I should argue that New York is not the proper place, or that any other point of the State is not. It is enough to say that the public servants of the State have settled this question. If there is any power to interfere with it hereafter, it is to be exercised in the same body that has settled it heretofore—the Legislature. and then it will be proper, there to consider, if it should hereafter be agitated in connection with other questions bearing upon it, the question of good faith. I hope, sir, that we shall not lose much time upon the discussion of this question, but that the Convention will agree to strike the section out, as being improperly here, and leave the matter entirely to the Legislature.

Mr. HATCH—I want to ask the gentlemen from Albany [Mr. A. J. Parker] whether he has not voted on every occasion against leaving the improvement of the canals to the Legislature. [Laughter.] Now, if he cannot trust the canals to the Legislature, why should we trust them to manage and expend money for the Capitol?

Mr. BERGEN—I will inquire if an amendment is in order.

The CHAIRMAN—It is not in order.

Mr. BERGEN—If it were in order I would move to insert "five" instead of "ten" years, if the section is passed. It appears to me that ten years is rather a long period to put off the erection of this building. Five years would be a more suitable time. I am not in favor of erecting this building at the present time. I believe it wise to postpone it, at all events, for five years; and I do it for this reason. Labor and materials now are very expensive—more costly than they have been, and probably more costly than they will be in the future. In five years' time, or thereabouts, I hope we will come to a specie basis, and get rid of this paper circulation. And it must be remembered that if we incur a debt now for the Capitol, we incur it in this circulation, which is not worth its face by considerable. I know this, in regard to the construction of public buildings. When the courthouse in my locality was built, the contracts were made when specie was the order of the day. The parties went on building; labor and materials doubled before they finished, and they came in and asked additional compensation in consequence of this increase, and they obtained it. If we commence the Capitol now, under this present circulation, and materials and labor decrease, which I have no doubt they will, does any gentleman here suppose that the contractors will pay back anything to the State on account of the decrease? If there is any such gentleman here, I think he would find himself mistaken. If there was an increase, you would have found them clamoring at the doors of your Legislature, demanding compensation, as they did in the county of Kings. Those are the reasons why I am in favor of deferring the building. But it should be for five years

instead of ten. I do not think it is wise to leave it to the Legislature to decide upon. I have had no experience in that kind of business, but I am told by gentlemen here who have, that there is a powerful lobby around the Legislature in the pay of certain interests—not the interests of the public. Perhaps, if they are correct, that lobby may compel the construction of this building immediately, and the consequence will be that it will cost nearly double what it ought to. I think it would be wise to postpone it for a time.

Mr. CHURCH—It is not a pleasant duty, Mr. Chairman, to oppose an expenditure of money which is desired by so many personal friends as this is. The citizens of Albany doubtless feel considerable interest in the erection of a new Capitol, not only for the incidental advantages which they will derive from the expenditure of the money, but for the beauty and adornment which such a structure would confer upon their city. I have spent several years of official life in this city, and during that time I have been treated by the citizens of Albany with the utmost kindness and hospitality; and I feel grateful for it; and so far as my personal feelings are concerned, I should be disinclined to offer one word of objection to this request on their part. But, sir, this is a matter in which the people of the whole State are interested; it is not a matter in which the people of Albany alone are concerned. The people of the whole State must pay for this building. It will be their property when it is completed. And the Committee on Finance on looking over the situation of financial affairs, and considering all the circumstances, with no desire but to do what was right, just, proper and wise, have deemed it expedient to prohibit, for a limited period, the erection of this building. It will cost the State a large amount of money. I have conversed with the gentlemen who have been appointed commissioners; and from the best information I can obtain from them and otherwise, I do not believe it can be accomplished short of \$10,000,000. I know the estimate is \$4,000,000, but no one expects that this work will be done short of a taxation of \$1,000,000 a year for ten years. If any gentleman does expect it, I think he will be entirely mistaken. It is a question of prudence and economy. The question is whether, with the large amount of taxation upon the people of this State, we ought, for the purpose of erecting a new Capitol, to add to their burdens a million of dollars a year for ten years. I think we should not. This building, it is said, is not sufficient; it is said that it is inconvenient. Well, it is not as spacious, and perhaps not as commodious as we could desire; but I submit to every gentleman of this Convention whether it is not reasonably comfortable and commodious. I submit to gentlemen who have occupied this hall during the past summer—

The hour of half-past one having arrived, the PRESIDENT resumed the chair in Convention, and the Convention took a recess until four o'clock.

AFTERNOON SESSION.

The Convention re-assembled at four o'clock, and again resolved itself into a Committee of the Whole on the reports of the Committee on

the Finances of the State and the Committee on Canals, Mr. SMITH, of Fulton, in the chair.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Gerry to section 17; Mr. Church having the floor.

Mr. CHURCH—Mr. Chairman, when the committee rose I was speaking of the conveniences which we now have in this Capitol building, and the experience of the members in relation to this hall, whether they have not found it, during the past summer, a very comfortable hall. I doubt whether in the Capitol at Washington there is so comfortable a room as this is. The Executive has very suitable apartments. Gentlemen have complained that some of the public officers are obliged to go outside of the building. They ought to go outside. There is no necessity and no propriety in having these public offices in the Capitol building, and if a new Capitol be built, I trust these offices to which allusion has been made will not be placed in the Capitol. The Capitol should be confined, in my judgment, to apartments for the Senate, the Assembly, and the Executive, and the court of appeals. The office of the adjutant-general, the paymaster-general, and the other offices to which the gentleman from Oneida [Mr. Alvord] has referred, should be outside of the Capitol. They have ample room. The State owns all the buildings on the square, and there is abundant accommodation for all the offices this building cannot accommodate. The Senate chamber is a very excellent room for the purpose for which it is designed. I had the honor of a seat for four years in that room, and I regard it as one of the most commodious and comfortable rooms for a Senate chamber in this country. Then we have for the library a spacious new building, put up at very great expense, and all the necessary accommodations for the use of the State. Now, is it wise, sir, at a time when every element that enters into the expense of building is double what it is at ordinary times and when we have a building as convenient and comfortable as we have, to enter upon this scheme of expenditure? I know some gentlemen say it will not cost ten millions, that it will only cost five millions; but, sir, I have seen so much of the estimates of cost made before work is commenced, which have been exceeded when the work was done, that I have very little confidence in them. I think the Capitol of this State, before it is completed, with all its surroundings, will cost ten millions. But whether ten millions or five, the question is whether there is such a necessity for it at this time as to induce the Convention to allow it to go on. The Finance Committee have come to the conclusion that this expenditure ought to be suspended for the present, and I believe it ought to be suspended. But every gentleman must make up his own judgment, and act accordingly.

Mr. GERRY—Mr. Chairman, a single word in support of the amendment which I have offered. It is very natural, indeed, that the inhabitants of the city of Albany should be desirous of retaining here an attraction which, unquestionably, renders Albany the second city in the State of New York in position and importance; for, take away from the city of Albany the Capitol and its peniten-

tiary, and there is very little else left that can render it of any position at all. Five millions are asked by the inhabitants of the city of Albany to expend in a large and enormously expensive building for the pretended accommodation of the Legislature and of the State officers. Every dollar spent upon that building, adds so much more to the importance of the city of Albany, and to the taxes of the people already enormous; and hence it is not remarkable that at the present time those who reside in this city should be anxious that a permanent locality should be had for the Capitol, when the result of having the Capitol located in this city would be so largely to enhance its position and its importance. Now the gentleman from Albany [Mr. A. J. Parker] will pardon me for saying that he was in error when he suggested that in the principal States of the Union, the State Capitol is located at some place far removed from the great commercial centers. If he will look at the State of Massachusetts, which has been repeatedly cited on this floor as an instance of the progression of the civilization of the Union, he will find that the very "hub of the universe" itself is the capital of the State of Massachusetts. I am well aware it may be answered by my friend from Orleans [Mr. Church] that somewhat of the peculiar conduct of the inhabitants of Massachusetts at the present day, their peculiar political views, and their still more peculiar political distortions, may be ascribed in no small degree to the location in the city of Boston of the Capitol of the State. But it is at the same time equally true that the fact that the Capitol of Massachusetts has been located in Boston, furnishes a reason why Massachusetts has risen to the position which she now holds, so far as regards her present financial position in the United States. The State of Connecticut has a double capital, one situated at Hartford, and one at New Haven, both of them the two largest cities of the State. The State of Rhode Island has its capital at Providence and Newport, the only large cities in that State. The State of Virginia has its capital located at Richmond, one of the important cities of the United States, and the State of Missouri has its Capitol at Jefferson City, a small distance from St. Louis, comparatively speaking. Now, if we take the countries of the Old World, we will find that those which are most prominent in civilization, invariably have the seat of government in their large commercial cities. It is so in France, in England and in Russia, the three leading powers. The instance cited by the gentleman from Albany [Mr. A. J. Parker] of the State of Pennsylvania, is a very apt illustration of the disadvantage of having the capital taken away from its legitimate position in the great commercial center; for Pennsylvania has been noted for years for its utter profligacy and corruption in legislation, and for the entire violation of the rules of law and order in such legislation. The only argument urged on this floor in favor of continuing the capital of this State at Albany, at all plausible, is that of long usage. It has been undoubtedly continued here more from the force of usage than from any other reason. But at the present time the city of New York has increased in a ratio

nearly double to that which Albany has done, or can do for twenty years to come, and its interests and the interests of the State demand that there should be some change from the city of Albany. The city of New York has suffered more because of its separation from the capital of the State than any other portion of the State itself; and I, for one, am fully satisfied that were the capital located in New York city, she would never again be compelled to pay over fifty millions of dollars for iniquitous local commissions, as she has done during the last ten years, because the Legislature, if it met in the city, would have had a practical illustration of their working and abuse which would have led to their immediate repeal after the first year of their creation. So far as the city of New York is concerned, she has abundant accommodation, not only for the Legislature but for the local and State officers. She has ample buildings, which the city would be only too glad to place at the disposal of the State for that purpose. I believe she has already made an offer to that effect—not only to furnish the ground but to erect the buildings required. There can be no difficulty in procuring, at the present time, a suitable locality within the city, where such buildings can be constructed, nor any trouble in securing their erection and completion without delay. I insist, therefore, that my amendment is entitled to consideration, and I trust it will be so received.

Mr. CLINTON—I ask the chairman of the Committee on Finance what he means by the "capital of State," in the first line.

Mr. CHURCH—It means the seat of government.

Mr. CLINTON—Then I would respectfully suggest to the chairman of the committee that there should be some verbal alteration made. I am a little desirous that every section which passes through the committee should go before the public in respectable English. Now if we substitute for the word "capital" the meaning of the word, as given by lexicographers, that is, "chief city of the State" and see how it will read. "The chief city of the State is hereby permanently located at Albany!" I respectfully suggest to the chairman of the Committee on Finances that what he means is simply this: that the city of Albany shall remain the capital of the State. But the criticism upon that is of no importance. I care little about the matter of language. Now it seems to me, Mr. Chairman, that it is our duty to do at least two things; the one is utterly to reject the amendment proposed by the gentleman from New York [Mr. Gerry].

Mr. CHURCH—Will the gentleman allow me? I would like him to state what his criticism is on the language of the section.

Mr. CLINTON—Simply this, that it locates a city in a city—the capital of the State.

Mr. CHURCH—It means the seat of government, simply.

Mr. OLINTON—It means something more.

Mr. CHURCH—Not at all.

Mr. CLINTON—Now in reference to the amendment proposed by the gentleman from New York [Mr. Gerry], it seems to me, with all respect, and kindness for that gentleman, we are

bound to reject it for two reasons; and one is that it comes before us simply upon the motion of the gentleman from New York. We have no evidence whatever before us that the people of the city of New York desire that city to become the capital of the State. And why any gentleman from New York should desire to take from the ancient city of Albany the advantage, whatever it may be, that she has so long and honorably enjoyed, of being the capital of the State, I cannot imagine. Why, New York is full of advantages; and if this whole city were placed there, it would hardly fill a corner of that immense commercial metropolis.

Mr. GERRY—Will the gentleman allow me to ask whether he puts forward the poverty of Albany as a reason for the continuance of the capital here?

Mr. CLINTON—No, sir, far from it. Albany has far higher and more honorable claims to the capital. It is an ancient, time-honored city, and it has well filled its place. It has a name throughout the land as the capital of the Empire State. She would lose something by the capital's being removed, it is true; but she would not lose all things. The gentleman indirectly, at all events, seemed to intimate that Albany had nothing but the capital. Sir, she has more. She has some of the noblest men in the State. She has an admirable population. Nay, more, she has energy; and, however much such things may be derided, she has some old associations. There are holy memories connected with her history. Now, sir, we are asked to remove the capital (for that is the proposition) from this city to the city of New York, and there is not a sign, there is not an expression from the city of New York, nothing that has the appearance of legitimacy, even of a desire for it. Well, sir, there is another reason. It has been well expressed by the gentleman from Albany [Mr. A. J. Parker] that the faith of the State is pledged. I doubt whether it is not a legal pledge. The Constitution left the matter with the Legislature, and the Legislature has acted, and has made what I think my friend, Mr. Gerry, if he looks into it carefully, will say is a contract, or something in the nature of a contract. Albany has furnished means. She has already furnished two hundred and odd thousand dollars. The State has accepted it and has acted upon it. It has appointed commissioners; it has done something toward carrying out this which I regard as a contract. We are too late, sir, with this provision. Now, Mr. Chairman, I have already, in discussing another matter, intimated what my opinion is as to the latter part of this clause. I think that the very reasons given for postponing the building of the Capitol are the best reasons why it should be left to legislative discretion. I have no apprehension in case the building of the new Capitol can be postponed, without detriment to that class of our fellow-citizens who are dependent upon their daily labor for their daily bread, without subjecting some of them to increased suffering, but that the Legislature will postpone it. But I do insist that our State, and every State and government, is something more than a mere machine to carry on the

forms of a government; that it is bound to be beneficent to its citizens at least; that the government is the parent of the country; that it is bound to exercise charity; that the heart of the whole people ought to be permitted to beat in its halls of legislation, and to find a vent in good acts; and if the dark time comes upon us when the laboring poor are suffering, and the Legislature can afford work of a kind which really adds to the value of the property of the State, it is the bounden duty of the Legislature to do it, and the united people will say, amen! Now, Mr. Chairman, I agree with the gentleman from Onondaga [Mr. Alvord]. I think the better way is to strike out the whole section.

Mr. E. BROOKS—Mr. Chairman, upon the whole, I do not feel disposed to favor the amendment which has been proposed by the gentleman from New York [Mr. Gerry]. I think there is a great deal in the position which has been laid down here, that this State stands pledged by the action of the Legislature, through two separate bills passed—the one in 1865, and the other in 1866—to maintain the Capitol at the city of Albany. And here, in passing, let me say a word to my friend from Erie [Mr. Clinton], that I think he is entirely in error in the criticism which he has made upon the section reported by the chairman of the Finance Committee. This criticism reminds me (if he will pardon the remark) of these words of Sterne, I think, that "of all the cant in this canting world, although the cant of hypocrisy may be the worst, the cant of criticism is the most tormenting." I think the criticism is not just. It is said that Albany is the capital of the State, and it is proposed by this section to make it so permanently. The new building which it is proposed to erect will be the Capitol of the State. The distinction is very clearly defined by the chairman of the committee. Now, sir, we should not want, after all that has been said in the Convention and out of it, that the Capitol of this State should be located in the city of New York, and I think the gentleman who offers the amendment [Mr. Gerry] has given a very good reason for it, when he states why they ought to take away the seat of government from Harrisburg to Philadelphia, to wit: the great corruptions of the Legislature there. If one-half of what we have heard be true of the city of New York, the gross corruption which obtains there, the great ignorance and the overwhelming amount of vice which exists in that city, I, for one, do not wish to add the vicious character of the Legislature of New York, by having the Capitol removed to the metropolis. [Laughter.] Sir, in regard to this State of New York, I know it occupies a proud and envious position. I remember when Daniel Webster was in the city of London a guest at the Lord Mayor's dinner, that in presenting the great American to the many noble and distinguished guests present, the Lord Mayor was at a loss to recognize the precise home and locality in the United States of that eminent son of Massachusetts; but finally he thought of a way that would give him his proper location, and then said, "I have the honor, gentlemen, to introduce to you Daniel Webster, the distinguished statesman from the Upper Senate of New York."

[Laughter.] And that was the manner in which Mr. Webster was presented to a distinguished body of persons at that time. Certainly, sir, whether the Capitol is located at the city of Albany or at the city of New York, there is no probability that we will ever lose our identity. But, sir, there is a more practical purpose in my rising than the remarks I have made would seem to indicate; and that is to read an amendment which, when the proper time comes, I propose to introduce and press upon the favorable consideration of the Convention. I do not think the chairman of the Finance Committee is right in making so large an estimate for the cost of the new Capitol, and I hope the people of the State of New York will not be deterred from making a properly limited expenditure of means for that purpose. I conceive it to be just as proper, however, to introduce some limit to the expenditure for a new Capitol in the Constitution (albeit it may more properly be considered a legislative act) as to insert the limitations which have been made in regard to canal improvements, on which we have passed so many days. I suppose one-half of the sum named by the chairman of the Committee on Finances is the utmost limit that ought to be expended on any such work as this. I will therefore propose at the proper time to amend by inserting in the second line, "But no greater sum than \$5,000,000 shall be expended upon building the Capitol, and no greater tax than a quarter of a mill for any one year shall be imposed for this purpose."

Mr. A. F. ALLEN—I am in favor of the section reported by the committee, and my reason is this: I think the present Capitol quite as convenient for the purposes of legislators and officers as it is convenient for the State to build a new Capitol at this time, taking our financial condition into consideration. I believe by deferring the building of this Capitol for a term of years, when labor and material shall have been very considerably reduced, a much better building may be erected for half the cost indicated by the gentleman from Albany [Mr. A. J. Parker]. Now, sir, this building is, at the present time, in a good state of repair; it is comfortable and roomy enough; and for other offices there is abundant room in the buildings adjoining. It seems to me that it would be the height of folly, considering the prices of labor and material and the financial condition of the State at this time, to build a new Capitol, which, I have no doubt, according to the plans talked of, would exceed \$10,000,000 before completed. For that reason I am in favor of the report of the chairman of the Committee on Finance.

Mr. ALVORD—I would ask any gentleman if he has information on this point? My recollection is, that there is not a single Constitution of any State of the Union that fixes the location of the capital—not one. I believe I am correct in the proposition that if we undertake, in this Constitution to fix the capital, ours will be the first State in the Union that has ever done any such thing. I am opposed to the amendment which the gentleman from Richmond [Mr. E. Brooks] proposes to offer, and although not before the committee I will take the opportunity of

speaking to it. First, according to the assessment of this State at the present day, and taking that as the basis of the future, it would take thirteen years to build the Capitol, expending five millions of dollars. We would get by a quarter-mill tax \$400,000 a year. That, multiplied by thirteen, would give \$5,200,000. Supposing we went on with the Capitol, and expended the five millions, and there was an absolute necessity for \$100,000 or \$200,000 more to complete the work, what are we going to do? We have got to let it remain in an unfinished state, perhaps open to the weather and dilapidation and useless for the purpose of inhabitation until we go through the operation of submitting the question to two successive Legislatures and to the people, and passing a vote that may increase that amount. Now, it seems to me that what has been said shows conclusively that this subject should be left to the Legislature of the State, in regard to the necessity for the work, when the propriety of taking the money of the people for that purpose shall recommend itself. I trust, therefore, that all these amendments will be voted down. I do not consider that the amendment of the gentleman from New York [Mr. Gerry] was offered with any idea on his part, for a single moment, that it would be passed by the Convention. Therefore I will pay no particular attention to that. I trust all the amendments will be voted down, and that the committee will come to the distinct proposition upon striking out this section.

Mr. CHESEBRO—Inasmuch, Mr. Chairman, as I feel constrained to vote for the section of the article reported by the Finance Committee as a whole, I desire to say a few words in explanation of that vote. The great consideration with me in sustaining this provision of the article is the one which has guided me in the votes I have given on the various sections of the finance report we have considered—the necessity on the part of the Legislature now of stopping the expenditure of money until the State is extricated from its financial embarrassments. It is hardly necessary for me to add to what has been said of the necessity on the part of the State of suspending somewhere, stopping at some point the expenditure of money, until it shall have fulfilled its obligations to its creditors. Now we are loaded with debt, and that is the great point with me on which I shall place my vote in stopping this expenditure of money, so far as that will have any effect. In regard to this building, we have shown, from sitting here during the heat of the season, that this room of itself is sufficient for all practical purposes of the Assembly. One hundred and sixty men have been assembled here with their various officers, whereas, during the session of the Legislature, only one hundred and twenty-eight require to be accommodated, with their officers. With regard to the Senate chamber, the Senators and all persons conversant with that chamber know that it is abundantly capable of accommodating the Senate. In regard to the various military bureaus that have grown up during the war, to which the gentleman from Orono has alluded as not having accommodation, I trust they are not to be permanent institutions in the State. The bureau of military statistics and

the officers necessary during the war will be very much circumscribed in extent, both as to the room they require and the work they have to perform. It will not be a great while, I take it, before a large part of that labor will be disposed of. Now, sir, I am opposed to leaving this subject to the Legislature for the reason that, as matter of principle, I am in favor of stopping this expenditure of money. I would no more give the Legislature the power to create debt and tax the people to build a Capitol than I would to make appropriations for the system of internal improvements which we have opposed. The same principle applies to this as to the other sections of the report, opposition to incurring any further debt until we have met our obligations. Then, in regard to what has been said, that we are not so much in debt as to frighten us with its magnitude, because we are to be relieved of \$26,000,000 of bounty debt; by the assumption of it by the general government, I am willing to place myself on record as opposed to its assumption by the general government. I am in favor of New York paying its own debt, accrued during the rebellion. If other States, from cowardice or other cause, have paid larger bounties to substitutes, let them bear the burden; or if they have paid less, let them derive the advantage; and not have them put on an equality, by having the debt assumed by the general government. No, sir, let the State of New York pay her own debt. She is able and willing, and let other States pay theirs. Now I am in favor of retaining the Capitol at the city of Albany. I am in favor of it from association, and from convenience. It is a central position, for the accommodation of all the citizens of the State. You could not take the Capitol to Syracuse or to Utica, (which is more near the geographical center) and accommodate the whole of the citizens as well as in Albany; and although it may be a novel provision to insert in the Constitution, it is not the first novelty introduced by New York, which has been imitated by other States. Then, as a matter of economy, look at the public buildings which the State has built here. Are they all to be abandoned for the purpose of locating the Capitol at some other place? Surely not. But, in view of the fact that we are already loaded with taxation, I am in favor of postponing the building of the new Capitol until the State has extricated itself from financial embarrassment, and I apprehend that ten years is not too much time to accomplish that result.

Mr. ROBERTSON—Mr. Chairman, as the action of the Convention on the proposition of my friend from Onondaga [Mr. Alvord] remains as yet in the womb of fate, I shall not undertake to discuss, at any length, the propriety of having the section he moves to strike out introduced into the Constitution, which locates the Capitol and restricts appropriations for erecting a State building for legislative halls and officers of the State. Not am I much moved upon the merits of the proposition before this Convention, in regard to the location of the Capitol, by what has been said as to the accommodation which one hundred and sixty gentlemen have had in this ancient and time-honored city of Albany, in this Assembly chamber. I have not been so much impressed with

the character of the accommodation here as to say that, if we are able to build new halls in the city of Albany, for the accommodation of the Legislature, they should exactly adopt as a model the room in which we are now convened. [Laughter.] And, sir, while we are amending the catalogue of this section in regard to the Capitol of the State, I may as well suggest that the phrase "rebuilding of a new Capitol" expresses something wholly unknown in the language of this country. But I understand that such phrase has been already corrected, and I therefore withdraw all criticism on that subject.

Mr. FOLGER—The section has been rebuilt. [Laughter.]

Mr. ROBERTSON—I do not know whether the Constitution of any State makes use of the term "capitol," as ample enough to include all the buildings in which the Legislature of the State and the officials of the State shall be accommodated. It may be ample enough; and I have so much respect for the gentlemen who have made this report, that I presume they have, upon due consideration, adopted the word "Capitol" as an expression which is sufficient to cover all the buildings necessary for the purposes to which I have alluded. In regard to the words "capital of the State," I must say that I agree with my friend from Erie [Mr. Clinton], that it would be much better to say "seat of government." There is also some force in the suggestion of the gentleman from Onondaga [Mr. Alvord], that it is unusual to state in the body of a State Constitution the place where the government shall be permanently located. But, sir, if we are to insert it, I admit that Albany has great advantages; that for generations past it has been considered almost impregnable as the capital of the State; that whether the State wanted it removed farther west, nearer to the geographical center or nearer the center of population, or further south, to the seat of wealth, civilization and refinement of the State, neither wing of the army of attack on the city of Albany has been able to make any permanent impression upon the fortress that has been established here. I do not presume to say that the city of Albany rests for its prosperity, its wealth, or its reputation entirely upon the establishment of the seat of government here. If any advantage is to be derived from that fact, I do not believe the city of Albany has derived as much benefit therefrom as from the natural advantages of location and its means of communication with the rest of the State. I am fully aware that the nation which first colonized the State established at Albany a fortress, in order to protect them against the natives and foreign invaders; that Albany continued the seat of government through colonial times and while the country was under the control of that conquering nation under which it so long remained, until the burden of rule became intolerable. I am aware that by long habit and the custom of submitting to certain laws, we have continued the capital of the State at Albany down to the present time. But if we are to have the location of the capital of this State petrified in the Constitution, so that it cannot be changed, I prefer, both as a native of the city of New York and for the sake of

posterity, that the seat of government should be located where the arts, and wealth, and refinement and civilization, and everything which dignifies and adorns the capitals of European nations, so unite together as to indicate where shall be the seat of government. Strong as Albany is in the character of its citizens, great as it has been in its past history, and able as it has been to produce from the leaves of history records of her sons who have distinguished themselves from time to time in legislation, in statesmanship, in warlike feats, and in commerce, I am satisfied that the city of New York can produce one hundred pages for one. The position and growth of that city points out to the world by irresistible argument, that there, and there alone, should be the seat of government. With all that has been said, with all the vials of wrath that have been poured in this Convention upon the devoted city of New York, with all that has been charged upon it as the center and nest of immorality and corruption, I apprehend the city of New York will show, in the character of its own inhabitants, their intelligence, their power, their learning, their devoted loyalty and patriotism, a record which they need not be ashamed to place beside that of the cities of any other State in the Union. And therefore it is, if we are now to petrify the locality of the seat of government of the State, I am for taking it to that great metropolis. The very term itself implies that it is the great central city of population and wealth, from which emanates most of the arts and instruments of knowledge of the State, which are collected there for the purposes of educating and enlightening the intellect of the people of the State. In the city of New York, above other parts of the State, we are cosmopolitan, tolerant, divested of local prejudice, inclined to receive hospitably the oppressed of all nations, ready and able to collect from all parts of the State, of the nation, and the world, and better furnished with information which comes through the various avenues which commerce has prepared, and which center in that city. Therefore, it is sir, that I claim, if we are to have any place fixed in the Constitution as the capital of the State, it should be in the city of New York, that Venus of cities rising from the ocean, decked with its spoils, and her lap filled with the products of the earth and human industry.

Mr. CHURCH—In relation to the criticism of my friend from New York [Mr. Robertson], I would say that the word "rebuilding" was a mere misprint, which was corrected. In relation to the word "capital," the criticism of my friend from Erie [Mr. Clinton] is not correct. "Capital" is a proper word to use for the seat of government. The capital of the United States is located at the city of Washington. The capital of the State of Virginia is at Richmond, and the section proposes that the capital of the State of New York shall be located at the city of Albany. The word might be changed for the "seat of government," and I have no objection to the change, if the Convention desire.

Mr. CLINTON—This criticism of mine was not made in any unkindness.

Mr. CHURCH—Not at all.

Mr. CLINTON—I had some doubt about the meaning of the word, and had recourse to the dictionaries. I found the definition given by Webster, Worcester, and other lexicographers to be "the chief city or metropolis of a State or nation." Now, it occurred to me as rather singular to say (substituting these words), "the metropolis, or chief city of the State, is hereby permanently located at the city of Albany." I do not think the language is good. But I am not particular.

Mr. CHURCH—I am quite willing to make it "the seat of government," if desired.

Mr. KETCHAM—Will not the gentleman adopt the words used in the Constitution of Michigan: "The seat of government" shall be, etc.

Mr. CHURCH—I have no objection. But gentlemen are mistaken in saying that there is no Constitution which fixes the seat of government. In the State of Florida the Constitution provides, that "The seat of government shall be and remain permanently at the city of Tallahassee until otherwise provided for by the action of a Convention of the people of the State." In the State of Iowa the Constitution provides that "The seat of government is hereby permanently established, as now fixed by law, at the city of Des Moines." In Kansas "the city of Topeka" is fixed as the seat of government. In Ohio "Columbus shall be the seat government until otherwise directed by law." In Western Virginia "the seat of government shall be at the city of Wheeling until a permanent seat of government be established by law." And in several of the Constitutions of the States I find not only is the seat of government fixed and located, but it is provided in the Constitutions that certain officers shall reside at the seat of government, a provision that we have not gone into at all. So that there is nothing unusual in locating the seat of government in the Constitution. And when we remember the discussions which have taken place in the Legislature in relation to removing the seat of government of this State, I think it eminently proper to say, by the Constitution, where the seat of government of the State of New York shall be established, in order to end all controversy upon the subject.

Mr. LAPHAM—Mr. Chairman, the present building in which we are sitting furnishes as ample facility for the passage of bills as the present locks of the canals do for the passage of boats. [Laughter.] And although the united vote of the delegation of this city, which owes much of its importance to the canals, has been against the expenditure of any money for their improvement (which might invoke against the section under discussion the opposition of friends of the canals), I shall not be guided in my action by any consideration of that kind. I am entirely opposed to putting in the Constitution any provision like that named in the seventeenth section, and I will state the reason which alone controls my vote. It is this: suppose we adopt this section, and the Constitution is submitted to the people in November and ratified by the people, so that it shall become the fundamental law of the State, and that between that time and January following the Capitol should be burned to the ground—here would be a provision against building a Capitol,

It seems to me this illustrates the utter folly of any attempt to put anything of this kind in the Constitution.

Mr. GERRY—That furnishes an additional reason for putting the Capitol in the city of New York, for if it were burned up, another building could be furnished at once. [Laughter.]

The question was put on the amendment of Mr. Gerry, and it was declared lost.

Mr. BERGEN—I will now offer my amendment if in order. I move to amend by striking out the word "ten," in the third line, and inserting in lieu thereof the word "five," so as to read "five years" instead of "ten years;" and to add after the word "Constitution" the words "unless destroyed by fire." [Laughter.] And then add "nor shall a tax be levied or debt incurred for the same without the consent of the people, to be ascertained at a general election."

Mr. ALVORD—I would ask the gentleman if I understood him to insert the words "unless destroyed by fire?"

Mr. BERGEN—Yes, sir; that is it.

Mr. ALVORD—Then it strikes me that that is a very great inducement to the people of Albany to burn the Capitol down. [Laughter.]

Mr. BERGEN—That is a contingency which my friend from Ontario [Mr. Lapham] feared.

Mr. LAPHAM—There used to be a good many "burnburners" here. [Laughter.]

Mr. ALVORD—I would suggest that the gentleman from Kings [Mr. Bergen] insert an amendment in reference to volcanoes also—the words "unless destroyed by volcanoes or earthquakes," [Laughter.]

Mr. BERGEN—Some gentlemen are afraid that the canal may be destroyed by a volcano some three hundred and sixty miles in length. I am not one of those. Perhaps the gentleman from Onondaga [Mr. Alvord] entertains that fear and wants such a provision.

Mr. ALVORD—No, I do not; the gentleman is mistaken.

Mr. COOKE—I would ask my friend from Kings [Mr. Bergen] to add to the words "unless destroyed by fire" the words "as shall be provided by law," so that they may burn it down if they wish to. [Laughter.]

Mr. E. BROOKS—I call for a division of the question upon striking out "ten" and inserting "five."

The question was put on the first proposition to strike out "ten" and insert "five," and it was declared lost, on a division, by a vote of 37 to 43.

Mr. CHESEBRO—There is no quorum voting.

The CHAIRMAN—The Chair is quite sure there is a quorum present. Gentlemen will please vote.

The question was again put on the amendment and it was declared lost, on a division, by a vote of 47 to 48.

The SECRETARY proceeded to read the second proposition to add after the word "Constitution" the words "unless destroyed by fire," and adding to the end of the section the words "nor shall any tax be levied nor debt incurred for the same without the consent of the people, to be ascertained at a general election."

Mr. A. J. PARKER—I ask for a division.

Mr. ALVORD—I would like to ask the gentleman from Kings [Mr. Bergen] how he is going to destroy a new Capitol by fire before it is built?

Mr. BERGEN—I will withdraw the words "unless destroyed by fire." I inserted them in order to satisfy the scruples of my friend from Ontario [Mr. Lapham].

The question was put on the last proposition, and it was declared lost.

Mr. KETCHAM—I offer the following amendment:

The SECRETARY proceeded to read the amendment, as follows:

Strike out the word "capital" and insert the words "seat of government," so that it will read, "the seat of government of the State is hereby permanently located at the city of Albany."

The question was put on the amendment of Mr. Ketcham, and it was declared carried.

Mr. VERPLANCK—I move to strike out of the section all after the word "Albany" in the second line. Some years ago the question of removing the seat of government from Albany was discussed throughout the State. At that time railroads had not become common, and the people of the West were obliged to travel in stage coaches. There was much talk then, of removing the Capitol to Syracuse or to Rome or to some place more central than Albany. A strong feeling in favor of the ancient capital of the State, notwithstanding, prevailed, and the seat of government was suffered to remain at Albany. There is not a child in your State, who has not learned to say that Albany is the capital of the State of New York. I have, perhaps, some peculiar affection for the city of Albany being a native of Albany county. I confess that the city of Albany, the capital of the State of New York, has great personal attractions for me. It is known as I said before, to everybody who has been educated in the common schools as the seat of government. It was the place where the first articles of confederation, although not adopted, were formed by our fathers more than a hundred years ago. I hope that it will be for all time the seat of government of the State. No change has been called for; no other place has been named; delegates have not been instructed to change the seat of government from Albany to some other place. The question has not been discussed before the people; therefore, whatever may be done on the subject, so far as the Convention is concerned, the capital should remain in Albany. In reference to the remainder of the section, it seems to me that we have been trusting a little more to the Legislature than we were disposed to do a week or two ago. It has been suggested by the gentleman from Steuben [Mr. Rumsey] that there might be some virtue in legislators hereafter to be elected. This is a question of expediency whether or not we will build a Capitol and what we will expend for it. I do not know why members of the Legislature sent here fresh from the people, instructed from year to year by the people are not as capable of deciding this question as the Convention. I think that the Convention arrogate to themselves too much when they suppose they are the only gentlemen who can be sent here with virtue enough to pass upon questions of this kind, when

they necessarily come up. I hope, therefore, if anything is done with the subject we shall simply say that the capital shall be located at Albany. Stop there, or else strike out the whole section.

The question was put on the amendment of Mr. Verplanck, and, on a division, was declared lost.

Mr. E. BROOKS—I will offer the amendment I referred to in my remarks, to come in after the word "Albany," in the second line.

The SECRETARY proceeded to read the amendment as follows:

"But no greater sum than five millions of dollars shall be expended upon the building of the new Capitol; and no greater tax than one-fourth of a mill in any one year, shall be proposed for this object.

Mr. PIERREPONT—I call for a division.

The SECRETARY read the first division as follows:

"But no greater sum than five millions of dollars shall be expended upon the building of the new Capitol."

Mr. FERRY—I hope this amendment will not be adopted. While I have voted for the measures as they now stand, I am opposed at the proper time to restricting the Legislature in their appropriations of money for the building of such a Capitol as will be a pride to the State of New York. I do not want to see the money squandered, but when we shall have paid our debts, I shall be willing to see a splendid edifice built, and shall be willing to vote for all appropriations necessary to build. I do not know that it need cost over five millions but if it should, I will vote for it.

Mr. REYNOLDS—I shall vote against this proposition for the reason that I do not think a Capitol can be built for five millions of dollars. The Capitol of Ohio, built fifteen or twenty years ago cost about that; that is my impression. I believe the work was suspended a number of years for the want of funds. I have no doubt if this induces the State to commence building a Capitol, the people will have to amend the Constitution again to get the requisite means to finish it. No five millions will build a Capitol such as the wants of this State require.

Mr. PIERREPONT—I hope sincerely that this amendment may not prevail. The reason why I am opposed to it is, that I am against all amendments to this section, and I earnestly hope that the whole section may be stricken out. I have listened attentively to these debates, and I have not heard one good reason given for this section being interpolated in this Constitution at all. There is no one who has observed the progress of this country during the last twenty years who is not aware that it is always unwise in a fundamental law to legislate more than is absolutely necessary. No necessity has been stated and no argument has been made from which we can infer that a necessity exists for any portion of this section at all. The only reason that has been given for it is that, we have debates from time to time in the Legislature in relation to the removal of the capital. These debates, I apprehend, have done no harm. They have occupied a good deal of time, but I do not believe that it is for us to say that for the next twenty years we can so

much better anticipate the necessities of the time than the people who shall live in times to come. Every one who has watched the progress of affairs within the last five years must have seen the impossibility of those who create a Constitution, being able to foresee what will arise. We have seen the Constitution of the United States trampled down by the South; we have seen section after section of the Constitution of the United States set aside by the North, and laws passed directly in the teeth and spirit of the provisions of that Constitution. In 1857, every one who lived in the city of New York knew and saw, that at the time of the suspension of specie payment by the banks, the judges of the supreme court refused to execute the law; they suspended it and declined to do their duty under the laws or the Constitution, because a necessity had then arisen so great that public opinion operated to that extent that they deemed it unwise to carry out the provisions of the Constitution. What will happen within the next twenty years, we can no more foresee than those of us who lived twelve years ago in the city of New York could foresee what would happen. And for these reasons, and with the firm belief that it is never wise to legislate in the Constitution more than is absolutely necessary, and from the fact that we are so short-sighted and can foresee so little of what is to come, I deem a provision of this kind, unwise and shall vote against the amendment; and I shall vote in favor of striking out the whole section when the proper time arrives.

Mr. E. BROOKS—I realize as strongly as my friend from New York [Mr. Pierrepont] who has just taken his seat, the great uncertainty there is in the Constitutions of the State and of the federal government. I know it has been said that the Constitution of the country (and the remarks of my friend from New York [Mr. Pierrepont] have verified the truth of the statement) has been rolled up and set aside, and put at defiance both by the North and by the South, but if there is to be permanency anywhere, it ought to be in the Constitution of the State. Unless our action here for the last three or four weeks, particularly in the discussion of the financial question, has been mere child's play, an idle waste of time, it becomes us, in my judgment, to put some limit and restriction upon the proposed expenditure for the Capitol of the State. Is the Chairman of the Committee on Finances [Mr. Church] correct in what he has said, or is he not? He has declared in our presence here to-day that the expenditure upon this new Capitol would reach the sum of ten millions of dollars; whereas, the gentleman who represents the city of Albany [Mr. A. J. Parker], and who is conversant with the subject under consideration, and the commissioners of the new Capitol, appointed by the Governor and confirmed by the Senate, have declared under the plans and specifications now in the office of the commissioners of the land office, that an elegant Capitol can be built, sufficient for the Senate and the Assembly of the State, and for the executive and public departments, for the sum of four millions of dollars. I understand that the outside limit is about four millions of

dollars. It is to be remembered, in regard to this building, that Congress Hall and the adjoining property upon the right of us, has been purchased by the city of Albany, at an expense of some two hundred thousand dollars; that the land in front of the Capitol beyond the library has been purchased by the State, for the sum of seventy thousand dollars, and that the ground upon which this capitol rests and all of the ground beyond it now belongs to the State of New York, and is pledged for the purpose of a new Capitol. Therefore it is not necessary to expend a dollar of money for the purchase of ground. All that is necessary is to make a proper appropriation of money for the building the new Capitol. In my judgment we should limit in this Constitution precisely as we have proposed limitations on the expenditures for the canals and other things and for the payment of debts. We should put some limitations to this expenditure, otherwise we may go on and reach the sum of ten or fifteen millions of dollars. Whereas, if we put a limit of expense in this Constitution, it will be impossible for the Legislature to increase the expenditures beyond that amount. Sir, I believe an elegant, costly and substantial building can be erected, even for this great State, for the sum I have named, and unless we put the limitation in the Constitution we invite the largest possible expense. I have had some consultation on the subject with one of the commissioners of the new Capitol, and I understand this is their desire.

Mr. KINNEY—I should like to ask the gentleman from Richmond [Mr. E. Brooks] what amount a quarter of a mill tax will realize.

Mr. E. BROOKS—I understand it will realize something over \$400,000 a year, and if there should be a different assessment upon the property of the State it might amount to \$500,000 or more a year.

Mr. FOLGER—I would like to know from what authority the gentleman derives his information that the new Capitol will not cost over four millions of dollars. My information is it will cost a million of dollars to raise it up to the top of the basement according to any plan which has been suggested; that the removal of the present building, the excavation of the ground and the driving of piles, the laying of what may be called the foundation, will cost a million of dollars. I defy any man to look at any plan which has been presented to the commissioners for the building of a new Capitol to come here with the belief that three millions more will complete it. It is a thing impossible, and if we are to vote for the building of a new Capitol we should do it with our eyes open. I believe, when the building is completed according to any plans which may be adopted, it will cost this State fifteen millions of dollars.

Mr. E. BROOKS—Suppose it does cost a million of dollars to do all the gentleman has said; that is, to lay and complete the foundation for the new building upon which the marble, stone, iron and other equipments necessary to complete the building are to rest, will it require a greater expenditure than the remaining four millions to complete the work? I think not. My friend asks me where I got the information. I received it within

an hour or two, after diligent inquiry on the subject, from one of the commissioners of the new building, who has given much time and attention to the subject.

Mr. BELL—I have listened with attention to the different views presented in regard to this matter, and I am of the same opinion I was when the section was first read, that it is unwise for this Convention to take any action on the subject. The Legislature, as we are informed, had already provided for the building of a new Capitol in the act of 1865-66, and they have made provisions for that purpose. As has been stated, the State has procured a certain portion of land; the city of Albany has donated to the State the land known as Congress Hall block. As this matter is in progress, and as the Legislature have already taken up the subject, it may be wise for this Convention to leave it with them. The whole plan of cost in this Convention is a mere matter of theory. I hope it may not cost more than five millions of dollars. I have conferred with the commissioners, and they say they have no plan or estimate that will cost above \$4,000,000. But you know, and all know, that these estimates are not always safe; the probability is that it will cost a good deal more—how much no man can say. I am of the opinion, however, that it might be confined to the limit that the gentleman from Richmond [Mr. E. Brooks] proposes. But I have no idea that it will be safe for us to tie it up to that exact sum. I am of the opinion that should the work be commenced immediately on the adjournment of this Convention and continued on with due diligence, it would not be completed for over ten years. It is a work of great magnitude, and when built it should be commensurate with the position of this great State. I am opposed to restricting the cost to any sum; I hope it may not cost more than the estimate. I have entire confidence in the gentlemen who have been appointed on this commission. They are men of practical experience, men of high standing and character. They are selected from different political parties; they are practical men. I think it is much safer to leave this matter with them and the Legislature, than it will be for this Convention to place any irreversible provision in the Constitution on the subject.

The question was put on the first branch of the amendment of Mr. E. Brooks, and it was declared lost.

The question recurred and was put on the second branch of the amendment, and it was declared lost.

There being no further amendment the question was announced on the motion to strike out the section.

Mr. BICKFORD—I sincerely hope this section may be stricken out. I can conceive of but one reason for retaining the section, and that is to render it certain that the voters of Albany will be unanimous against the adoption of the Constitution. I would hardly respect them if they did not vote against it, with this section in. It is of the character of a good many other restrictions which weigh down the Constitution. This legislating twenty years ahead was inaugurated in 1846. Then it was provided for an extraordinary

Legislature once in twenty years, and a subordinate Legislature every year. The less legislating we do in the Constitution the better. I am opposed to this idea that we must have an extraordinary Legislature got together once in a while, say twenty years, and then do the greater part of the legislating, and the most important part of it, for the twenty years to come.

The question was put on the motion of Mr. Alvord to strike out the section, and it was declared lost, on a division, by a vote of 43 to 43.

Mr. ALVORD—I have a further amendment to offer. The people of the city of Albany believing that it was the judgment of the Legislature that the capital was to be located here by legislative action, and that the buildings were immediately to be commenced for the purpose of accommodating the increased wealth and population of the State, in its legislative capacity, generously came forward, and upon the strength and faith of these assertions upon the part of the people, as reflected through the Legislature in their acts, at great cost and expense to them as a city, donated certain lands and buildings immediately in the neighborhood of the Capitol for the purpose of increasing and enlarging the Capitol grounds in order to give the space necessary for the building which was about to be constructed under the act of the Legislature. While I do not believe that the city of Albany desires us to do so, I think that justice demands that we should re-deed this property to the city. I believe we should give them an opportunity, if we are going to delay the building of this Capitol for ten years, by placing this inhibition in the Constitution—to take back that property which they have thus given to the State for the purpose of a Capitol, expecting it to be built immediately. Therefore, I move to insert at the end of the section "if demanded by the city of Albany, the State shall re-deed to the city such lands and buildings deeded to the State within the last five years for the purpose of enlarging the Capitol grounds, with interest on the cost of the same."

Mr. HUTCHINS—I should with pleasure vote for the proposition of the gentleman from Onondaga [Mr. Alvord]; but, if I understand aright, the reason of the donation of the land by the city of Albany to the State was not for the purpose of having a Capitol immediately built, for there was no condition coupled with the deed warranting that the Capitol was to be built immediately; but it was in consequence of the fact that the subject of the removal of the capital was agitated, for the purpose of keeping the seat of government here. By the very terms of the Constitution we have done, I presume, all that the city of Albany requires: we have abundantly provided that the seat of government shall permanently remain in the city of Albany; that being done, unless it is stricken out so as to leave the inference that the capital may be located elsewhere, we have done all that was required of us by the city of Albany. I hope the gentleman from Onondaga [Mr. Alvord] will withdraw his proposition.

Mr. ALVORD—I cannot withdraw it, because I undertake to say that it was a kind of understanding that the new Capitol should be commenced immediately, at the time this land was

donated. It was for the purpose of increasing the area of these Capitol grounds and thus furnish room enough for the new Capitol building. Now, if we do not commence the Capitol for ten years, we perpetrate a fraud upon the people of Albany, if they look at it in that light. Therefore, we should give them the alternative of either taking back the property or else paying the amount they gave for it before presenting it to the people of the State.

Mr. FERRY—I suppose the city of Albany has been liberally dealt with. Albany has very many friends in this Convention, and I have no doubt they are disposed to be just toward it. It seems to me when this Convention goes so far as to permanently locate the capital here and render it good for twenty years, we have done a great deal for the city, and if, on account of our expenditures and our financial condition, we should ask that the building of the new Capitol be postponed for a few years, it seems to me the request is reasonable. I was about to suggest to the gentleman from Onondaga [Mr. Alvord] that if the people have been wronged by any disposition which we shall have made on this question, the Legislature can render the proper relief. The Legislature thus far have made such arrangements as have been made between the people of Albany and the State in regard to this matter, and the Legislature I doubt not will see that everything is done that is equitable with regard to the Capitol and with regard to the citizens of Albany, for certainly I should not wish anything that was inequitable.

Mr. ROOT—I was in Albany in the Legislature of 1865, and my recollection is, that if the capital was permanently located in the city of Albany, the citizens would present the State with a donation of at least two hundred thousand dollars. The only condition was that the capital should be permanently fixed at Albany.

Mr. VERPLANCK—What was the object of the purchase by the city of Albany of the land where Congress Hall stands and the donation of it to the State except that it was necessary to put a new Capitol upon it?

Mr. ROOT—It was to secure the permanent location of the capital at the city of Albany.

Mr. SEAVER—I trust that the motion of the gentleman from Onondaga [Mr. Alvord] will prevail, provided it is so modified that the people of the State shall be returned to their first condition as well as the people of the city of Albany. I understand that the people of the State have purchased other large property in the same neighborhood, and it is not fair that the people of the State should be compelled to keep this property, which will be useless to them, if another part is re-deeded to the city of Albany. If we are going to put the city of Albany back into its first condition, let the people from whom this property was purchased put the State back into its first position. I think it a very good suggestion of the gentleman from Onondaga [Mr. Alvord]. I doubt very much whether this is a proper location for the Capitol. I think in a few years hence, perhaps in ten years, the proper location for a Capitol in this city will be found to be a quarter or a third of a mile west,

where we will have better grounds and better surroundings. I am very glad that we have settled that the permanent location of the capital shall be in the city of Albany, for gentlemen will bear in mind that there is a little place springing up below here where there is a great deal of the wealth and refinement of civilization centered. It is not impossible that the Athens of Greece may be eclipsed by that of America. I hope we will keep the Capitol in this place, but not perhaps on this precise spot of ground.

Mr. BERGEN—There appears to be some justice in the amendment offered by the gentleman from Onondaga [Mr. Alvord]. However, I do not believe that Albany will desire to have the ground deeded back, and run the risk of a different location for the capital. But it would be just, and I would suggest to the gentleman from Onondaga [Mr. Alvord] that he so amend his amendment as to authorize the people of the city of Albany to receive the emoluments or rents of the premises which they have purchased for the use of the State for the ten years during which the building of the Capitol has been deferred. I think, having donated the lands to this State that are not occupied for State purposes during ten years, they are justly entitled to the rents arising therefrom during those ten years. An amendment of that kind, I believe, would be just. I have no time to write out the amendment, but if it is in order I will move so to amend.

Mr. FOLGER—I have no objection to the proposition of the gentleman from Onondaga [Mr. Alvord]. If the citizens of Albany wish to take back the property, perhaps it is just that they should be allowed to; but not for the reason he has given. I contend that there never was any such bargain, never any idea of such a bargain as the gentleman seems to think, that this land should be given as a condition, or as a price, for the immediate building of a new Capitol. If I remember aright, the first agitation of the project for the building of a new Capitol was in 1864; and when it was brought forward, the opponents of that project made a flank movement by a motion, or some other form of proposition arising in debate looking to the removal of the capital from this place further west. This excited alarm in Albany. Then the query became wholly as to whether it should be retained in this city or removed elsewhere, and it resulted in a determination, more or less formally expressed, that the capital should remain where it then was, but that the building of a new Capitol should not be immediately entered upon, and in the appropriation of ten thousand dollars for the purpose of securing plans to show what the new building would cost, in order that the Legislature might see whether the finances would permit a new Capitol to be built. That was all that occurred in 1864; that was all the determination arrived at by the Legislature of that year—the settling the location of the seat of government, and the obtaining of facts which should govern a future Legislature in its action as to whether, and how soon, it was proper to have a new Capitol. By many who were opposed to entering upon the enterprise of a new building, the opinion was expressed that Albany was the proper place for

the location of the seat of government. That was in 1864, if I remember aright, certainly not later than in 1865. Between that time and the time of the appropriation of \$250,000, the city of Albany bought this land, and if they bought it at all on the strength of any law, it was on the strength of the law of 1864 or 1865, because the \$250,000 appropriated for the purpose of a new Capitol was not made until 1867; and it was made for the purpose of procuring plans and laying before the Legislature information as to the utmost cost it would cost before any plan was adopted or the execution of any work proceeded with. I say the position in which the gentleman from Onondaga puts this matter, is to my mind incorrect. The people of Albany have never been seduced into buying lands with the idea that the building of a new Capitol was to be immediately entered upon. The Legislature has been from the first desirous to avoid that very evil. And when this subject was under consideration, and the proposition of removing the capital was sprung, it was to prevent that, that the quasi-obligation of the State was obtained to retain the Capitol in this city, the city of Albany purchasing land and donating it to the State for a site. That was the object sought to be obtained. And so far the Legislature went. But now, having secured that object, if the city of Albany says it is a hard bargain for it, I am perfectly willing to release it; but I am not willing to release it upon the idea that it has been deceived by any action of the Legislature. If my remembrance is correct, there never has been any idea of building a new Capitol immediately; but there has always been this very idea, that we will permanently locate the seat of government at Albany, and by and by build a new Capitol; but we will not begin until we see where we are; we will not spend the first dollar until we know how much the last dollar will cause the whole expenditure to amount to.

Mr. A. J. PARKER—I think we can avoid further discussion of this question. I think we had better not make a movement of this kind. I do not suppose the people of Albany desire to be presented in such position. It seems to me we had better let this subject alone entirely. There will be time enough to discuss a question of this kind hereafter. I do not myself believe this Convention will adopt this section. When the question comes before the Convention we will have opportunity to have a more general vote. I hope this amendment will be withdrawn.

Mr. ALVORD—If the gentleman desires it to be withdrawn I will withdraw it.

Mr. BERGEN—I withdraw my substitute. The question was announced on the adoption of the section as amended.

Mr. PAIGE—Is it in order to move a reconsideration of the vote on the motion to strike out this section?

The CHAIRMAN—It is in order.

Mr. PAIGE—I make that motion.

Mr. FOLGER—Does it not lie over on the table under the rule?

The CHAIRMAN—The Chair is of the opinion that it does not.

Mr. FERRY—I move that it be laid on the table.

The CHAIRMAN—That motion is not in order in Committee of the Whole.

Mr. BELL—I hold in my hand the act of the Legislature of 1865, which initiated this movement of building a new Capitol, chapter 648 of the laws of 1865. It authorized the citizens of Albany to donate to the State the property known as Congress Hall lot, and the obligation of the State in receiving that lot is found in that act. The first section states that "whenever the city of Albany, or the citizens thereof shall tender to the State a deed in fee simple of the Congress Hall block, the new Capitol shall be located in the city of Albany upon the site of the present Capitol, and such ground adjacent thereto, as shall be secured to that purpose, and conveyed to the State; and shall be built of such materials, and in such manner in all respects as will, in the judgment of said commissioners, best promote the public interests and secure the completion of a substantial and commodious edifice for the use and purpose hereinbefore mentioned; but the present Capitol shall not be removed until suitable rooms are completed in the new building for the accommodation of at least one branch of the Legislature." After defining the duties of the commissioners, the act appropriates "ten thousand dollars, or so much thereof as may be necessary, for the commencement and prosecution of the work herein contemplated, and the necessary expenses upon the same;" and it authorizes the treasurer to pay that amount. The gentleman from Ontario [Mr. Folger] has stated those ten thousand dollars were to cover the preliminary expenses, plans, etc. By the act of the Legislature, to be found in chapter 583 of the laws of 1866, it is enacted that the city of Albany shall hereafter be the location of the capital of the State. This, you will see, confirms as far as the matter of the act is concerned, the location of the capital at the city of Albany. The section of the act of 1865, does enter into a contract with the citizens of Albany, that whenever they shall have deeded this lot to the State, the State is bound to erect a Capitol building thereon of sufficient capacity to accommodate the Legislature and the State departments. In accordance with that section, the Legislature of 1867 donated two hundred and fifty thousand dollars, as the sum for the commencement of the new Capitol. Now, this matter has been thoroughly understood and discussed. The people of the State through the Legislature have entered into a contract with the people of a particular locality, the citizens of Albany, and it is unfair for this Convention to annul that contract. It will be much better, it seems to me, to strike out the section.

Mr. PAIGE—Under the statement of the gentleman from Jefferson [Mr. Bell] it seems to me that the propriety of a reconsideration of the vote refusing to strike out the section is manifest. All the initial proceedings have been taken on the part of the Legislature to erect a new Capitol in the city of Albany. Appropriations have been made to carry out and accomplish the purpose of rebuilding the Capitol at the city of Albany. And then again, sir, I do not think the project of rebuilding the Capitol comes within the strict principles of finance applicable to the creation of a

new debt. This is an object that comes within the class of objects that are to be deemed necessities. The Capitol is necessary to accommodate the people through their representatives. It is conceded upon all hands that the imperfections of the present building are so palpable that public business cannot be carried on with success and comfort. Sir, in cases of this kind, to apply the strict principles of contracting new debts, it seems to me, is entirely inapplicable. If it is necessary to have a new building to accommodate the business of the public, its officers and representatives, we should regard it as a necessity for the public good and general welfare. Now, it seems to me the Committee on Finances misjudged in interposing this article.

The hour of six o'clock having arrived the PRESIDENT resumed the chair and the Convention took a recess until half-past seven o'clock.

EVENING SESSION.

The Convention re-assembled at half-past seven o'clock and again resolved itself into a Committee of the Whole on the reports of the Committee on the Finances of the State and the Committee on Canals, Mr. SMITH, of Fulton, in the chair.

The CHAIRMAN announced the pending question to be on the motion of Mr. Paige to reconsider the vote on the motion to strike out section 17 of the report of the Committee on the Finances of the State.

Mr. PAIGE—I have very little more to say on the subject. The idea advanced was this, that the erection of the Capitol of the State of New York was the expenditure of money for the public accommodation, for the purpose of facilitating the transaction of public business. The general principles of finance, therefore, have no application to such expenditure, and in my judgment the seventeenth section is inapplicable to the article reported on the State finances. The committee might as well select some lock or aqueduct and say that for ten years there should be no expenditure upon such works. The strictest economist would expend money liberally for the erection of a dwelling for the accommodation of his family, and upon the same principle a State should not hesitate to expend money for the accommodation of its public business and its public servants. This is one of those matters of detail which belong to the Legislature. That body should assume the jurisdiction and control over it, as they have done. They have already initiated an arrangement for the erection of a Capitol in this city. They have appointed commissioners to purchase a site, and have obtained one. The matter comes legitimately within the province of the Legislature. Now, sir, I regard this expenditure as absolutely necessary for the public accommodation. We have all had experience of the great defects of this building, and have suffered in our individual health therefrom. I am in favor, therefore, of striking out this section and leaving the Legislature to dispose of it. The size of the building, its style of architecture and ornamentation, and the extent of its accommodations, are all matters of detail to be controlled and determined by the Legislature. They can provide for a more or less expensive building, according as they think

best. Doubtless, after providing the requisite accommodations for the public business, something will be due to the wealth, prosperity and imperial greatness of the Empire State; but these, as I have said, are matters of detail, which belong to the Legislature. I therefore move that the vote upon striking out this section may be reconsidered, and that, when the vote is taken, I hope the section will be stricken out.

Mr. E. A. BROWN—I trust, sir, that the motion to reconsider the vote will prevail. I do not see any reason for retaining the provision in the Constitution of the State of New York, except to advertise to the world that this State has become so poor, has approached so near to the verge of bankruptcy that it is unable to build a suitable Capitol for the accommodation and comfort of the members of the Legislature and other public servants. Has the action of the Legislature heretofore, and the action of the city of Albany heretofore, in relation to procuring additional land for the location of the new Capitol, proceeded upon the ground that the donation of the land from the city was in consideration that the State should locate the Capitol here permanently, and that nothing was to be done at present, nor at any specific time, toward the construction of that Capitol? Now, is it true, as I have heard and understood, that the Legislature has appropriated \$10,000 toward lands for the location of this Capitol; that they have spent over \$75,000 in purchasing lands for additional accommodations for that purpose; that they have appropriated this present year \$250,000 for the purpose of taking the preliminary steps and getting ready in a prudent, careful, economical way for the laying of the foundation of this edifice—an edifice which all understand it will take years and years to build? Is it true that the tenant of Congress Hall was notified some time ago to leave the premises, that he advertised and sold his furniture, that some portions of the building were actually removed, to make way for commencing a new Capitol not ten years hence, but now? The city of Albany bought the lease, and then afterward, there being some delay on the part of the Legislature, the buildings were allowed to be occupied temporarily, and are now so occupied, without, I believe, any rent whatever. Now has it been the understanding of the city of Albany and of the people of the State of New York, that the donation of this land was in consideration of the permanent location of the Capitol here, without any agreement or understanding that reasonable diligence should be used on the part of the State to lay the foundations of the building and to proceed economically and safely to its construction and completion? Put this off for ten years sir, and how many of those who shall have come here to serve the public, will have gone away with health seriously impaired by the atmosphere of this chamber? How many have suffered in that way during the last ten years? I say, again, that unless it is the purpose of this Convention to declare to the world that the State is so nearly bankrupt that we cannot build a proper Capitol for the accommodation of our public business, I see no practical use in putting that section in the Constitution.

The question was then put on the motion of Mr. Paige to reconsider, and it was declared lost, on a division, by a vote of 39 to 43.

Mr. BARTO—I ask for the reading of the amendment offered by me this afternoon, which I now offer as an additional section.

The SECRETARY read the amendment as follows:

SEC. —. The principal and interest of the general fund debt and the canal debt under the amendment of 1854, and the floating canal debt, and all indebtedness hereafter created shall be paid in coin.

Mr. BARTO—I trust this section will be carefully considered and adopted by the Convention. If this great State cannot or will not fulfill its obligations fairly and honestly as a State, what right have we to complain of its officials or its individual citizens if they fail to maintain their integrity? The debts to which this amendment applies were all contracted when there was no other currency in which they could be paid but coin. The contract was that they were to be paid in lawful currency of the United States. What was lawful currency of the United States? Gold and silver. None other was known to the general government; and in that currency the State of New York promised to pay every dollar of its interest and principal. It was not stipulated that if the general government should declare depreciated rag-legal tender that they would pay in that. No, the fair and legitimate agreement was that the debt was to be paid in the then unquestioned lawful currency. Thus it was understood by the State financial agents, who continued to pay gold for some time after the depreciation of the paper issue of the government; and to their credit be it said, they continued faithfully to fulfill the promise of the State in the letter and spirit of their promise until they were forbid to do so by a faithless and repudiating Legislature—that faithlessness brought about, as I am informed, by the unwillingness to pay of one or two of the State deposit banks who were represented by their officers in the Legislature. A portion of this indebtedness was created when paper was depreciated some ten per cent, and the State demanded gold because they expected to pay in gold, and the parties who took the loan paid as high as ten per cent for the gold to pay into the State treasury. When the bids for this loan were made, the financial officers of the State were asked if there was any doubt about the State continuing to pay its obligations in coin, and the idea of repudiation was scouted. But for some reason, perhaps to make the credit of the general government appear better, it was necessary to destroy that of New York. Strange that our Legislature had no more pride than to put our State down by the side of Mississippi and other repudiating States. California and Massachusetts, wiser than we, fulfilled their obligations to the letter and have maintained their credit. Massachusetts has been able to borrow in Europe, money on far better terms than the general government, and upon terms that would put us to shame were we to make the effort. Our State, in consequence of the repudiation of her great obligation when money was wanted to pay for boun-

ties, was refused in the great money center of our own State, and our bonds, bearing seven per cent interest, were distributed among the counties because the financial officers of the State were refused money upon them except at a great discount. Counties raising money were compelled to submit to a discount to get it. We, as a State, have already lost more by refusing to pay our interest as promised than we have gained by compelling the creditor to receive depreciated paper. Thus it is always, with States as with individuals, dishonor and discredit bring their reward. Some, to justify the refusal to pay coin, say we could not collect revenues in coin. Do they not know that the war which imposed upon us the legal tender rags also brought largely increased revenues to our canals, more than enough difference to have paid all our debts in coin? Let us reverse this suicidal policy, and by constitutional provision forever prevent a failure to fulfill our pecuniary obligations. The general government has never refused to pay in coin as promised—why should the great State of New York? There is but one step from State repudiation to repudiation of the bonds issued by the general government. If we, by our action here, set an example in that direction, we may expect the Butlers and Careys to follow our example. Every vote here recorded in favor of the dishonor of New York is tens of votes in favor of repudiation of a debt most onerous, because largely increased by fraudulent means. Let us look to it, bondholders of the general government, and friends of the credit and good name of New York.

Mr. VERPLANCK—I would like to ask the gentleman a question. Whether he does not propose to pay the contingent fund debt in the same manner?

Mr. BARTO—I propose to pay all the debts in the same manner.

Mr. BELL—I am not a little surprised that this question should be thrust into this Convention at this time. It has no connection, however remote, with the matter now under consideration, and it cannot be to serve any practical purpose that a resolution is introduced at this time to pay all the debts of the State in gold. If the gentleman from Tompkins [Mr. Barto] had examined this question thoroughly he would have seen that the proposals for our bonds specified that they should be paid in the city of New York at the Manhattan Bank or at the Comptroller's office in Albany, in *lawful money of the United States*. Then, sir, the bonds were sold in this State, and not in Europe or in any foreign county; the State was under no obligation whatever to pay in any other currency than the lawful money of the United States, and when the gentleman asserts that this contract was abrogated by a repudiating Legislature he asserts what the facts in the case do not justify. Had we sold our bonds in Europe, as many of the States did, and pledged ourselves to pay them in gold, that payment should be made, whether the premium on gold was five or five hundred per cent; but that was not the case. As I took some part in that legislation I feel called upon to say that I think the State has not repudiated its debt and that it has not lost its credit by living up to the letter of its contract. Now,

the gentleman asserts that when money was required on the State bounty bonds we were unable to obtain it. I had the honor to have a seat in the Senate of this State at that time, and I know that those bonds were sought for by a certain class of capitalists. The only difficulty that the Legislature had, was that the bonds were not made to run long enough; we could have negotiated a much larger amount had they been made to run eighteen or twenty years instead of six or twelve, and the capitalists in New York who subscribed millions—some of them took a million—preferred that the bonds should have a longer time to run; they required a condition in the act that it should not be left to the opinion of the State to say whether they should have money or bonds, but that they should positively have the bonds.

Mr. BARTO—My resolution does not contemplate the payment of these bonds in gold.

Mr. BELL—I think the gentleman did not understand me; I understood him to say that the State was not able to negotiate the bonds to raise money for the bounty debt, because they had repudiated their former obligations. I said the gentleman was entirely mistaken. The State did receive subscriptions to a very large amount—sufficient, the Comptroller said, for the emergency, but if any county preferred bonds, it had the option of taking them, or part bonds and part money. Now, if the gentleman will look at the market price of State bonds at the present time, he can not come to the conclusion that they are a depreciated currency, he will find that they are quoted at eight to ten per cent above par.

Mr. BARTO—Greenbacks?

Mr. BELL—Yes, in the currency of the country in which the bonds were made payable. Sir, as I have said, the whole argument of the gentleman is not such as will serve any practical purpose in this Convention, and I repeat, it is not true that the State is in a condition of bankruptcy; on the contrary, its credit is good and its bonds are above par.

Mr. COMSTOCK—I ask for the reading of the amendment.

The CLERK read the amendment.

Mr. COMSTOCK—I call for a division of the amendment.

Mr. S. TOWNSEND—I see the propriety of holding firm to obligations incurred previous to the suspension of specie payments. The division of the proposed section now before us, that the gentleman from Onondaga [Mr. Comstock] has just called for, if carried, would imply a recognition on the part of this body of those obligations. Somebody said here in debate a few moments ago, I believe it was the gentleman from Jefferson [Mr. Bell], that this is not a proper time to consider a matter of this nature, and that it is rather an intrusion upon the proper business of the committee. Why, sir, what is the great feature of the article that we have been engaged in considering? It is a matter of debt, credit and taxation; and in one form or another the subject has come before us every day. Part of the time a portion of the committee—nearly a majority of the committee at times—favored the idea of credit, with reference to any future improvements of this kind, but fortunately

a majority came in and said: "No! taxation for what you choose to do." Now, sir, the question of what that taxation shall consist of, whether it shall be a dollar worth thirty-five cents, or a dollar worth one hundred cents, directly applies to all that we have before us in this article. My colleague from Richmond tells us that he understands that the projected Capitol which we have been discussing will cost \$5,000,000. Five millions of what? With all his prudence, caution, and desire to state things correctly, if things take a worse course than they are in now—I hope they may improve—if our dollar decreases in value as it has done during the time that we have been here in session, he would not be willing to guarantee that your projected Capitol can be paid for by five millions or by six millions of dollars. The principle that my friend from Tompkins [Mr. Barto] endeavors to assert, that where we have assumed obligations represented by gold on the part of the lender, we should redeem those obligations in gold or its equivalent, is one that the majority of this Convention will never put themselves on record against. And this is the point that I wish to enforce, so far as I feelably may. I said in the earlier part of our deliberations that all these returns from your canal commissioners and Comptrollers, unless reduced to the gold basis, would be very erroneous data from which to draw any deductions. In the papers of the day, for instance, it is stated that the canal receipts will be \$2,600,000; but what is that sum actually—what is it worth? I declare, sir, that that \$2,600,000 is not equal to-day to \$1,800,000 in 1846. Some gentlemen may say that we will pay our debts in the same currency in which these sums are stated; but if we pay in currency worth thirty-five cents, debts which we contracted in currency worth seventy cents, we pay unjustly, and a moral obligation rests upon the State and upon each and every one of us to redeem our pledged faith. When reference was made here the other day to 1837, and the section enjoining any future legislation from legalizing the suspension of specie payments, I took occasion to say that obligations incurred under the law existing in 1837 imposed a direct loss upon the State of \$60,000, in order that they might redeem their honorable obligations to foreign creditors for the interest that accrued between the 10th of May, 1837, and the 10th of May, 1838, when our banks did not pay specie. Our recent Comptroller, Mr. Robinson, proposed, when the other crisis arrived in 1862, that we should do the same thing; but, as the gentleman from Tompkins [Mr. Barto] explained, owing to the efforts of some delinquent bank depositors who had their representatives on the floor of the Legislature, his honest and creditable attempt to redeem the credit of the State was defeated. Another illustration. The gentleman from Onondaga [Mr. Alvord] (to go back again) spoke recently of the stop and tax policy of 1842 as being unnecessary. I deny that; and history will show, as I have already stated on this floor, that during that very period the city of New York was able, by reason of her good faith and honorable management of its finances, to

borrow money at five per cent at par, while the great State of New York, with eight times as much value represented by her assessment, could not borrow at a less depreciation than twenty-five to thirty cents on the dollar. It is the matter of credit that we are to look to. When that becomes tainted it sells for less, but when it is well preserved it sells for more, as the credit of the State of Massachusetts does now. We speak of our bonds now as at par, but we are calculating upon entirely erroneous principles. We flatter ourselves on the strength of our financial position, but our bonds in the markets of the world, where a metallic test is resorted to, are thirty per cent below par. It is these considerations which should induce the greatest caution on the part of the Convention and the Legislature in all their undertakings, until a better state of things arises. In building your Capitol, in enlarging your canals, after making your contracts you may be compelled to pay in money worth forty per cent more than you contracted for if specie payments are resumed; or, on the other hand, you may be compelled to pay in money worth twenty or thirty per cent less than when you incurred the obligation. And then the doors of the Legislature will be besieged by claimants, not strictly just ones, yet such as the Legislature will probably yield to. Therefore I say that it is of great importance to adopt something like the proposition of the gentleman; or better still, go further, as I suggested in some resolutions now on the table, and submit to the people the question whether all our taxes and tolls, and our debts of every nature, shall not be paid in specie. If we are not prepared to submit that question at no far distant time I do not think that we properly grasp the responsibilities that now devolve upon us. I have made these remarks without much premeditation, and I hope that some other gentleman more competent than I am will pursue this, as I consider it, important discussion.

The question was put on the first division of the amendment offered by Mr. Barto, and was declared lost by a vote of 29 to 59.

Mr. A. F. ALLEN—I now offer as an amendment to the article the section contained in my minority report.

The SECRETARY proceeded to read the section as follows:

SEC. —. The Legislature shall provide by law at the first session thereof after the adoption of this Constitution for a uniform rate of assessment and taxation upon all the real and personal property within the State, whether owned by citizens or non-residents, including all associations and corporations, domestic or foreign bankers, bank shares, brokers, merchants otherwise doing business in this State, and having a place of business therein, and having capital invested therein for the purpose of carrying on such corporate business, trade or manufacture.

Mr. A. F. ALLEN—Mr. Chairman, the question of assessments and taxation, is an important one, too important to be ignored, as was done, by the Convention of 1846, and as some gentlemen would have desired to do at this time. I regard it as one of the most, if not the most, important question before this Convention, and for that reason I have

undertaken to bring before this body, the sections now under consideration in order to correct a great evil that has existed for a long period, and to try to bring about a more uniform and equitable rate of taxation. The demand upon the State for the protection of her citizens and their property, together with the public interests, requires this taxation, which is extremely burdensome. Let us, therefore, provide in this Constitution for a law that will insure for the people of our State, a uniform rate of assessment and taxation, so that the burdens thus borne shall be equitable, by taxing the whole property of the State, so that it shall pay its proportion according as it requires the protection and benefits of our laws. As the law now stands, it is impossible to secure a full and fair return of all the property. The law at the time when passed was all proper and suited to the conditions and wants of the State. But a great change has occurred in population, agriculture, manufactures, commerce and finance, and thereby the large increase of taxation as it now exists, and as it will exist in the future, demands a thorough and radical change, and for additional proof I will here quote from the present Comptroller's late report.

"It is a demonstrable fact that, as a general rule, real estate is not assessed at more than one-half its value, whilst the larger portion of personal property escapes altogether, and it is assumed that under the present system it is impracticable to secure full and fair valuations. The difficulty originates mainly in the strife between towns to reduce their proportionate share of the county taxes, and between counties for the like object in respect to taxes imposed by the State. As to personal property, the local officers do not possess the power to compel a discovery, and the custom of undervaluing real estate, has become so fixed and settled that it overrides the most positive provisions of law."

But what say the State assessors in their report of 1862?

"The assessors feel constrained to again call the attention of the Legislature to the defects of the present tax laws, and to ask it to take measures for a thorough modification of the present assessment laws to the end that all kinds of property may be compelled to pay its portion of the taxes which are raised for its protection, and upon which its value in a great measure depends. The present laws have been nearly all in force for more or less of the last half century. They were enacted for and by an entirely different state of society than now exists, and are entirely inadequate to the wants of the present day."

They also state in their report of 1863 as follows: "Owing to the absence of any reliable statistics bearing upon the subject referred to them, the assessors have been compelled to adopt a system of their own, and to carry it out under serious difficulties. In their personal examination they soon discovered that there was no fixed standard for judging of the value of real estate, either in country, city or villages, that scarcely two individuals could be found in any locality that agreed as to the relative or positive value of their own or their neighbor's land."

Here we have the testimony of State officials, who, in their official position, in the discharge of their duties, meet with the same difficulties as claimed by the tax payer, that is, inequality of taxation; and this arises from the want of an adoption of some fixed standard for judging the value of property. And there is no sure way to arrive at this question of value only as you make a cash value the standard. Sir, I know the fact, that real estate is assessed unequally. In some localities it will not exceed one-fifth of its value, and in others one-third, others one-half to two-thirds; and it is plain to see that our State assessors have a troublesome task to perform where there is no fixed standard or uniformity of valuation, and when no two individuals could be found in one locality agreeing as to the value of their own or their neighbors' property; and this demonstrates the importance of a thorough change in the law, that all assessments be made upon the sworn return of the owner or agent of such property to the local officer at the cash value. Let the return specify the property in items. If it be a farm say how many acres and its cash value; if it be houses and lots let it be so stated, and their value; if it be in money, or stocks, or merchandise, or bonds and mortgages, notes or accounts, or other kinds of property, state the amount and the cash value. Let this all be done under oath, and we shall soon find that our assessed valuation will be very largely increased; that this will do away with the complaint, of the inability to reach personal property which now escapes almost wholly. I have spoken of the inequality of the assessment of real estate. Let me now give some illustrations of the way bank capital is assessed. In many localities bank shares are assessed at their par value, in others at three-fourths, at another locality at one-half, and in some one-third—while many of the old State banks escape taxation entirely, having ceased to issue bills, and what securities they have deposited to redeem their remaining circulation consists of United States stocks, instead of State stocks and bonds and mortgages. This scare-crow called government bonds, or United States stocks, is one that is used with great effect, and does legally relieve immense amounts from taxation. It is resorted to by many properly, while the dishonest man resorts to it as a fraud upon the honest tax payer, and thereby compels him to pay the taxes that justly belong to another to pay. The section under consideration provides for a uniform rate of assessment and taxation upon all the real and personal property within the State, whether owned by residents or non-residents doing business in the State. Such assessments should be made upon the sworn returns of the owner or agent having it in charge, upon its actual cash value, in such manner as shall insure equality in the distribution of the public burdens upon all property within this State. The laws regulating assessments and taxation have undergone but little change or modification for the last fifty years. They were passed when our productions were mainly agricultural, and when manufacturing, commerce and financial transactions were in their infancy, compared with the present day. According to the last census returns, there were

24,627 manufacturing establishments in the State, with a capital of \$227,674,187 and a product of \$463,603,887. Look at the commerce of the State, with a tonnage belonging to the port of New York alone, in 1865, amounting to 1,223,264 tons. The tonnage of American and foreign vessels which entered and cleared from the several districts of the State during the year ending June 30, 1866, was:

The tonnage entered,..... 4,454,016
The tonnage cleared,..... 4,198,754

But look at the exports and imports of New York city in 1866. Foreign imports amounted to \$306,613,184, at gold prices, which, made equal to our currency, freight and duties added, would be little less than \$600,000,000, while the exports of New York city alone were \$192,329,554. Let us examine the financial figures of the State. We find we have in bank capital stock \$131,186,418, with deposits amounting to over \$225,000,000. This does not include the savings banks, or the deposits in these corporations of over \$131,000,000; neither does it include the vast amount that is locked up and deposited with bankers, brokers, and houses dealing in stocks, or the very large amount invested in State, municipal and railroad bonds. To better illustrate the magnitude of the financial transactions of our great city, I will beg leave to quote from a writer considered entirely correct, and stands so accredited.

"Our transactions with the banks of our city alone average \$85,000,000 to \$90,000,000 per day, in addition to the millions upon millions that are daily turned over by promissory notes and bills of exchange and book accounts."

The figures I have given are the figures of 1866 and not of 1820. In the year of 1821 the entire assessed valuation of property was less than \$245,000,000, and of that amount not less than \$34,000,000 was of personal property. But to-day we have over \$1,659,000,000 of assessed valuation of property, and of that amount about \$423,000,000 is of personal property. In 1845 the bank capital was less than \$44,000,000, with a deposit of \$28,000,000, while your bank capital to-day exceeds \$131,000,000, and their deposits exceed \$225,000,000. In 1858 the savings banks had in deposit about \$42,000,000, but to-day their deposits exceed \$131,000,000. Now sir, let us look at the corporate taxable property of this State, and also examine into the manner of taxing that property. We have over 3200 miles of finished railroads that are propelled by steam. In addition to this, we have over 200 miles of horse railroads or perhaps what are more unusually called street cars. This property has cost (and in most cases its stock is above par) over \$180,000,000. Included in this amount is \$30,541,028, of real estate, and this whole entire railroad property is assessed at only \$38,306,700. We have also in bank capital \$131,186,418; this capital is assessed variously, in some localities at its par value, in others at three-fourths and others at one-half. Besides the regular bank capital, there is at this time deposited in the savings banks of this State \$131,769,074. They report as follows: invested in stocks \$89,769,074, in bonds and mortgages \$31,

112,163; and they report an excess of \$9,865,441 and this whole fund, including \$893,200 of real estate is only assessed at \$2,317,030. The further inequality in the manner of taxing this property is seen in the cities of Albany, Auburn and many other localities where no tax is assessed; in the city of New York where the great bulk of the deposits are, there is no tax assessed, only as against the real estate belonging to this class of corporations; while the cities of Brooklyn, Buffalo, Rochester, and Syracuse have attempted to tax to a small proportion of the personal estate beyond their real estate. The joint stock fire insurance companies capital is put down at \$29,149,660; the capital here included holds real estate to the amount of \$866,866; this entire capital is assessed at \$15,706,068. There is also a class of insurance companies known as New York mutual fire insurance companies, representing no capital stock, but whose property appear under the head of assets and real estate. These companies return \$2,242,440.94 of assets, and \$3,000 of real estate, and they are assessed \$102,345. Again, companies known as New York joint stock mutual marine insurance companies, return as capital \$2,869,100, and also gross assets, a further sum of \$20,273,357.01; representing in real property \$778,288; this entire property is assessed \$6,456,988. There is also another class of insurance companies known as New York life insurance companies, returning a capital of \$3,485,000, with gross assets of \$25,504,599.80, and real estate to the amount of \$21,900; this entire property is assessed \$535,637. Again, the insurance companies known as the casualty companies of the State of New York \$500,000; this property is assessed for \$51,200. Again, there is a class of fire insurance companies of other States representing a capital of \$14,610,690, with additional gross assets of \$277,664.19. Also marine insurance companies of other States representing a capital of \$1,750,000. Again, there is another class of life insurance companies of other States representing a capital to the amount of \$1,105,600, and gross assets to the amount of \$32,128,816.75. Also, casualty insurance companies of other States representing \$1,154,100. The last four companies referred to, being those from other States, represent a capital of \$18,670,390; also gross assets of \$32,406,480.94, which are not assessed. There is also a class of foreign insurance companies from foreign countries, representing capital of \$8,709,657.44; also gross assets of \$2,852,437.95; this last class of companies are assessed for \$143,500. The gas-light companies of this State represent in capital stock, \$16,176,067.50; out of that stock they have invested in real estate, \$4,404,865; this entire stock is assessed for \$12,981,921. Express companies are assessed for real estate, \$54,900, and on capital stock, \$295,000; total, \$354,900. Navigation companies are assessed for \$1,976,647. Miscellaneous companies are assessed for \$28,978,050.50. The last three mentioned classes of property and companies are assessed not upon the return of capital stock, but upon such amounts as the assessors have agreed upon, and yet no man can stand up and say that they pay their proportion of the taxes upon any just and fair proportion of the real capital they represent. Again, I call the Con-

vention to notice the manner in which the vast capital stock of telegraph companies escapes taxation; they are only assessed for \$10,000; this almost amounts to a fraud, and ignoring the question of taxing the capital stock of those stock companies. I believe, so far as I have examined into this question of assessed valuations, that railroads and banks and gas companies, and a certain class of insurance companies, are more heavily taxed than any other corporate property in the State. Yet we see, by what I have stated here and read, that property is very unequally taxed, that a very large proportion of the personal property of the State escapes taxation, and that what does get upon the assessment rolls is assessed at a very small per cent of its true value. The object that I had in this report was to take some step that should insure a uniform and equal rate of taxation. I believe that no man, whether he be a citizen or non-resident, has any right to claim protection for his property engaged in business in this State, unless he is willing to stand a fair proportion of the taxation of the State, of which he is claiming the protection of its laws. Any man that wants to avoid paying his proportion of the tax for the protection he receives for himself and his property, I look upon as seeking to commit a fraud upon those who pay the taxes.

Mr. MAGEE—I would ask my friend from Chautauqua [Mr. A. F. Allen] what he means by some of the language of this report, which I will read. The language seems to me to be ambiguous. I may be mistaken in my understanding of it, and perhaps he can explain it satisfactorily:

Sec. —. The Legislature shall provide by law at the first session thereof after the adoption of this Constitution for a uniform rate of assessment and taxation upon all the real and personal property within the State, whether owned by citizens or non-residents, including all associations and corporations, domestic or foreign, bankers, bank shares, brokers, merchants otherwise doing business in this State, and having a place of business therein, and having capital invested therein for the purpose of carrying on such corporate business, trade or manufactures.

Now, sir, does the gentleman intend to affect a branch office from another State, if a manufacturing corporation or coal corporation of Maryland or Pennsylvania, which pays taxes in the State granting the corporate powers, and transships property to a commission house in the city of New York or elsewhere? Does he intend to tax that class of men or property in this State who have paid their taxes two or three times over in the States from which they came and at the points of production? I do not think he so intends, but I fear the section may be so construed in some places. I would simply like to be informed.

Mr. A. F. ALLEN—That would be a more question of fact. I do not wish any gentleman to think there is any fraud about this. I mean to open the whole thing up so far as I am capable. I regret it is not in other hands, but I will do the best I can to discharge my duty. In reply to the question the gentleman put to me, I propose in this bill that every foreign or non-resident person who comes into our State and sets up business here, and who claims the protection of our

laws, should pay his proportion of the tax, in proportion to the protection he requires of us.

Mr. MAGEE—The difficulty is, that the word "non-resident" may be applied to a foreign corporation.

Mr. A. F. ALLEN—If a foreign corporation comes here to do business, I want to make it a citizen by taxation.

Mr. MAGEE—The gentleman does not want to tax capital stock in this State, which is already taxed in the State which creates the corporation. Nor does he want to tax its productions which are taxed by the State which authorizes the production. You might as well tax the freight in transit over a canal or railroad. I do not think the gentleman intends any such thing; but I fear the language which he uses will lead to a conflict of opinion which may result unjustly. Take for instance, if you please, the Cumberland coal company, a corporation under the laws of the State of Maryland, which has a local office in the city of New York, and transports its coal there to be shipped. Does the gentleman mean that he will tax the capital stock of that company in the State of New York, or that he will tax the property they may have on sale? Does he intend to tax the capital stock of a coal company, which is controlled largely outside of the State, and also the product of that company which is sent to the city of New York or elsewhere, where the company may have a local office?

Mr. A. F. ALLEN—If the gentleman is a non-resident of the State, and has personal property invested in business in the State, it should be taxed. If he be a citizen, and holds mortgages on property or other personal interests in other States, those mortgages or other interests should be taxed here. If a merchant, his stock in trade should be taxed. And all property invested in business that receives the protection of our laws, should bear a uniform proportion of taxation in proportion to the protection it receives.

Mr. MAGEE—I do not understand the gentleman as having fully answered my question. My point is this; and I will restate it. A coal company of Pennsylvania, chartered by the laws of that State; has its office there; it pays the taxes affixed to its corporate privileges, in proportion to its capital, and pays the transit duty upon the product of that company, and pays direct taxes upon the coal itself in the State of Pennsylvania, which comes to New York, for sale, where that company has an office, which coal is sold from the ship or the vessel, or is perhaps put on the dock and remains there to be transhipped. Now, I fear it will be claimed that that class of capital will come within the provisions of this amendment. If that is so I think it ought to be corrected. I do not think it is just. That property has already paid its full share of taxation. Now, I will take my own case. I am a citizen of the State of New York. My property is principally in the State of Pennsylvania. I pay taxes upon my capital stock there. I pay taxes upon my dividends. I pay taxes, or the transit duty, upon the coal I ship through that State, and I pay a direct tax upon

the coal. It is transhipped to Albany, and begins to accumulate there in the winter, preparatory to the opening of the canal. While the coal is piled up there, it is personal property but it is on its way to market. Now, would the gentleman by his amendment affect my property on the way to market and tax it, because it is private property or because it is technically the property of a foreign corporation?

Mr. A. F. ALLEN—It would not be liable to tax during its transit.

Mr. MAGEE—You might just as well stop the railroad cars on the way and tax the property in transit. But I will pass this over for the present. I think there cannot be any diversity of opinion between different localities upon it; but I shall endeavor to make it so that it will be understood, and if in order I will offer this as an amendment:

There shall be levied upon and collected annually from each of the incorporated and associated banks and insurance companies organized under the laws of this State, and doing business in this State, a tax of two per cent upon the capital stock of each of said banks and insurance companies, which shall be paid into the treasury of the State for the general purposes of the State, and said corporations and companies shall not be subject to the payment of any other taxes whatever.

Mr. ALVORD—There has been an impression in the minds of the people of this State for many years, I believe, that there is a great and grave necessity for the alteration of our laws of assessment and taxation. Attempts have been made from time to time in the Legislature to produce some beneficial results in that direction. While all so far as my observation extends—and I have had part in the discussion of that matter in the Legislature—seemed to be willing to acknowledge the fact that there was a necessity for such alteration, yet owing to the restriction of the time of the Legislature, and to the multifarious matters which naturally and necessarily came before it, all attempts of that kind have been met, at least in recent years, with the statement that time enough could not, by any possibility, be given to the consideration of the subject there, but that there would recur under our Constitution, within a few years, a period of time when it could be examined and settled upon the right basis by the Constitutional Convention which would be called under the Constitution of the State as it now exists. We have come down to that time. Knowing the views so ably and eloquently expressed by the gentleman from Orleans [Mr. Church], when he was Comptroller of the State, upon this subject, I did hope that he would give his mind and his talents to the investigation of this matter, and that, as part and parcel of his report on the subject of the finances of the State and of this vital question intimately connected therewith, he would bring in an article which would receive the consideration of this Convention. What is taxation? and what is the necessity for it? Taxation is, to a certain extent, a barbarity. It is taking from a person property which belongs to him for uses other than those in which he is immediately concerned. But it is a necessity of government, for no other purpose

under heaven than to afford protection to that property. If the taxation is a poll-tax, a tax upon the head of a person, it is for the protection of his person; but, ordinarily, under our law, taxation is for the purpose of protection to property. I hold as a self-evident truth that all property that is protected is liable to and should be impressed with a tax to pay for that protection; but it is not a question of the ownership of property, but it is a question of the fact that the property is within the sovereignty which protects it, which throws around it the guardianship of its laws and which takes care of it, which sees that it is not diverted from the uses for which it was originally intended by its owner. In that view of the case there can be no other solution of the question than that all property within the limits of this State which is protected by the laws of the State should pay taxes to the State. Under our system vast amounts of property escape taxation. I will now answer directly the gentleman from Schuyler [Mr. Magee] on this point. While we could have no right, and while I would not tax the capital of a company in another State which might have an office in the city of New York, and while I would not tax that property in transit, while passing from the point of departure to the place of destination, having been subject to one tax as the property of that corporation or that individual, yet if that corporation or that individual set up an establishment within the limits of this State to put their property for the purpose of selling it or distributing it among our people, I would tax it under such circumstances. Why should it not be? Do we not tax the merchant who is engaged in business alongside of this corporation or individual? Do we not tax the importer or the manufacturer who has a salesroom in the city of New York? Why do we ask it? We light the streets with gas, we have paved the streets and built sidewalks; we have given them a police and fire department; we have given them all the machinery of government for the purpose of protecting their property as well as the property of the resident within the limits of our State, and why should they not pay for it? Why, forsooth, some men say, because if we do not shield them from taxation they will not come within the limits of our State; they will keep away rather than to pay a per centage upon the profits of the sales of their property. We give them the same protection that we give to our own citizens, and we should make them pay for that protection the same that we make our own citizens pay for it. Another thing. To permit, in this country of credit, where a large portion of the business is done upon credit, persons to avoid taxation offsetting indebtedness against property, operates to the extent of almost crushing out the landed interest of the country. It throws the taxes of the country upon the land, and relieves personal property from it. Let me show you how it operates. Take one of the interior cities of this State. A merchant is selling one or two hundred thousand dollars worth of goods in the year. He goes often to the city of New York, and with probably a capital of five or six thousand dollars, and a credit of three, four or five times that amount; he from time to time fills up his shelves and distrib-

uses his property with advantage and profit to himself, throughout the community, so that at the end of the year he shall find that his five thousand dollars of actual property, together with his credit, have added another five thousand to it, or one hundred per cent. The tax-gatherer or the assessor goes to him and says, "Pay us the tax upon the property you are thus dealing in." "I cannot do it," he answers. "I have the right, under the laws of the State of New York, to offset against that my indebtedness, and I owe the merchant in the city of New York for this property; therefore, owing for this property, and the property I have in my accounts on my books being precarious, and may never be gathered together; my indebtedness is equal to the property I have got in my hands, so I cannot pay the tax." The assessor follows the property down to the city of New York, and goes to the jobber. The jobber answers in the same way. "I owe the importer in South street, or Broad street for those goods." He travels down further to the importer, and asks him to pay a tax upon that property in the interior of the State; and the importer says, "No, sir, I cannot, because my bills are out for that to the manufacturer in Birmingham or Sheffield." So that we are at the expense of protecting the goods of the British manufacturer for nothing, giving them all the benefit and all the advantage of our entire system of government, and all its security to their property. It may do in a community that owes only to itself, to go upon the doctrine of balances, but in a country like ours, whose policy is the credit system, that policy is really taxing our own property and protecting the property of foreigners without taxation. The only way, it seems to me, in which we can protect our own interests, is to subject the property itself to taxation; to take hold of a bale of goods, and say to it, "Thou art worth so much, and so much taxes must be paid," leaving it to the owner to come forward and redeem the goods from that lien upon them. Another thing: I hold that under our present system, there is no greater manufactory of perjury on the face of this earth. What is the habit throughout the entire length and breadth of the State of New York. Towns are fighting towns, through their assessors, to get at the lowest possible point the assessment of their real and personal property, for the purpose of going up to the board of supervisors, and in the taxation of the county charges, to have their particular towns as low as possible in the roll of taxation. That engenders a necessity on the part of counties to act in the same way; and you find the counties cutting down their assessment rolls in the equalization of valuation of their property as low as possible, so that when they come up here to Albany and appear before the State equalization board, to divide the State taxation, they shall pay the least amount of tax they possibly can. There is no attempt on the part of assessors and supervisors to get at the honest actual value of the property of the country, but there is an attempt to get it to as low a point as is possible in order to get an advantage over neighboring towns and counties, in the operation of dividing the taxes of the county and State. My idea is

that each man should be his own assessor. That he should be compelled under oath to come before the board of assessors and state a list of his property, giving its fair cash valuation in the market of the country. Then we shall have the entire amount of the value of the property of the different counties of the State. Each and every man will state the value of his property, and his neighbors can be brought in to make him show the value of his property; or it may be proved from outside parties if he does not give a true and faithful statement with regard to it. My word for it, if you go to work and so change the practice in future with regard to this matter, instead of having the value of the property of the State at \$1,500,000,000 you will have it \$10,000,000,000 in the State of New York. Go to your insurance companies in the State to-day, and what facts do you learn? Taking out the property *in transitu*, and looking only at the perishable personal property which is under insurance in the State of New York to-day; and I know, and I think every man who hears me knows, if he has given any attention to the subject, that over one thousand millions of personal property belonging to the people of this State now pays a tax to the insurance companies; whereas your banks which have no insurance upon them, your insurance companies which have no insurance upon them, together with *choses* in action, and the whole personal property of the State upon the assessment roll, is a trifle over four hundred millions of dollars. Every one knows that the thousand millions I have spoken of is not a fifth part of the perishable personal property in this State; and still a thousand millions is insured in the State of New York to-day, and we have the beggarly account on our assessment rolls, which is the collection of everything which is of a personal nature, of only four hundred millions of dollars. My county is not worse than any other county, but go with me to my county, and to a town, where the equalization board put down the land at \$25 per acre, and yet there is hardly an acre in the entire township that will not bring the sum of \$75. Is not this the right way to reach taxation, to bring the people to support the government which protects their property? Go into any of the cities of this State. Here you have a lordly mansion, vastly beyond the power of ordinary individuals to rent, because the amount of value expressed in the interest of the sum that they cost would be perfectly astounding. Put it on the assessment roll, and it is placed there at one-third or one-fourth its absolute and actual value. Take alongside of it the humble mansion of a poor man, worth \$750, \$1,000, or \$1,250, and how is that put on the assessment rolls? It is put there, not at its full value, but at two-thirds or three-fourths of its value; and the poor man has to pay the tax upon this, while the rich man pays a tax on only one-third or one-fourth of the value of his dwelling. Is there not reason to wake up to the crying necessity to correct the taxation in this respect? I do not believe there is a man within the sound of my voice who, if this system was adopted, and the entire property of the State was brought under taxation, would

not be relieved of taxation that he is now compelled to pay under the laws as they at present exist in the State of New York.

Mr. VERPLANCK—Will the gentleman allow me to ask him a question, whether, in the present manner of settling the valuation of real estate in the counties he has spoken of, the real estate does not bear a greater amount of taxation than the personal property?

Mr. ALVORD—Vastly greater. I have no sort of question with regard to it at all. Personal property is all covered up and escapes taxation; while real estate is taxed for one-third to one-half its value, the country through; personal property escapes almost entirely.

Mr. FOLGER—What proportion of the personal property of the State is taxed?

Mr. ALVORD—I can tell the gentleman the amount: the amount taxed is little over \$400,000,000; and I have no sort of question that the value is over \$5,000,000,000 in the State.

Mr. FOLGER—Is one-third of it taxed?

Mr. ALVORD—No, sir; not a fifth, or sixth, or tenth of it. I do not wish to get here into any unnecessary debate on this subject, but I ask gentlemen if they can explain one single thing? The New York Central railroad pays a tax to-day to the people of the State of New York on less than fourteen millions of dollars, while its capital, expressed in dollars, is twenty-four millions and its debt fifteen millions more, making thirty-nine millions. Where is the tax on the balance of that? The tax upon the bondholders and the amount of capital in the hands of the stockholders is paid by the road. The bonds, to a large extent, are held within the limits of the State. Where is the tax they should pay? I would not speak of this but that it is a salient matter which can be seen of all men. There is no more wrong about that matter than in almost all other assessment of taxation within the limits of the State. Within the limits of my own county a man who is able to buy me every day in the week and have his millions, or, at least, hundreds of thousands left over, has actually, under the operation of the assessors and of the tax-gatherers, for more than twenty years past, paid less than two-thirds as much tax as I have been bound to pay; and, so far as regards my real estate, it is not assessed at anything like its value. I will tell you another thing, in my own individual case, to show how it operates in the country, and I mention it as an instance—not an isolated instance, but is repeated all over the State. I owned once a piece of twenty acres in a town divided by an imaginary line from a city. A neighbor of mine owned the opposite piece of twenty-four acres in the city. My twenty acres, worth \$500 more than his, were assessed at \$100 an acre, and his twenty-four acres were assessed at \$5,000.

Mr. BURRILL—It seems to me that the gentleman from Onondaga [Mr. Alvord] has shown very satisfactorily that if the laws of this State were properly administered there would be no difficulty whatever in bringing to the surface the property liable to taxation and making every citizen of the State bear his due proportion of them. The amendment which has been introduced by the gentleman from Chatauqua [Mr. A.

F. Allen] seems to have been designed, in the first place, for the purpose of defining what kind or descriptions of property should be liable to taxation; in the second place, to provide a mode of bringing that property to the surface; and, in the third place, to lay down a system on which the property shall be assessed, and in the assessment of which no deduction whatever should be made for debts. My objection to the amendment is that it has no place whatever in the Constitution; that the Legislature is now vested with full power and authority to make such laws as may be necessary for the purpose of carrying out and exercising the power of taxation which it necessarily possesses. And I think a very brief reference to the laws as they now exist, will show that all the descriptions of property which in this proposed amendment are declared to be subject to taxation, are now declared by law to be subject to assessment for the purpose of taxation. There are difficult questions which arise in respect to the jurisdiction of the Legislature over certain classes or descriptions of property for purposes of taxation; and among others there is the question how far the Legislature has jurisdiction or right to tax property which may be temporarily within the territorial limit of the State. In the first place, the tax must be levied either upon lands, or that species of property which is designated as personal property. All residents in this State, under existing laws are taxed; not only on their lands but on their personal property; and our statute books give a full and particular description of what is personal property within the tax laws. They include every species of property which can be devised, which can be imagined, and of course everything which is stated in this amendment. Non-residents of this State, under existing laws, are of course taxed on all their lands owned here, and are likewise taxed by existing laws on all personal property belonging to them and brought within the limits of this State for the purposes of being dealt with in the way of business. I am sure we can go no further in the exercise of our jurisdiction over non-residents than to tax all lands owned by them within the territorial limits of the State, and to tax all the personal property invested by them in any business conducted within its limits. Again, corporations are taxed on all their lands owned within the limits of this State, and they are taxed on all the personal property owned by them within like limits; and this applies equally to corporations created under our own laws, and corporations created under laws of sister States. Again, we tax stockholders; stockholders in all corporations are taxed upon their personal property aside from their shares of stock in the corporation, whether the corporation be a corporation created by or under the laws of this State. They are also taxed in this State, under laws recently passed by this State upon their shares in corporations, whether those corporations pay or do not pay a tax on their capital; so that we include non-residents; we embrace real estate and all descriptions of personal property within our State, whether owned by residents or owned by non-residents, covering the personal property of every resident of this State, no matter where it

may be situated, and covering all the personal property within the State no matter to whom it belongs. Now, I say our laws are sufficient for the purpose of securing the taxation of all the property over which the Legislature of this State may properly exercise jurisdiction by way of taxation; and that all that we desire or require is that the laws now in existence be properly enforced; enforced honestly and by competent and efficient men. Every species of property in this State over which the Legislature of this State may exercise jurisdiction by way of taxation, is subject to that power; and every dollar which can be properly brought within the reach of the treasury of this State by taxation may be secured to it. Now, for the purpose of showing that I am right in respect to this, I call attention to the existing statutes on this subject, which provide, in the first place, that "all lands and all personal estate within this State, whether owned by individuals or owned by corporations, shall be liable to taxation," subject to certain exceptions and exemptions to which reference need not now be made. There then follows the provision which is peculiarly applicable to non-residents of the State, in these words:

"All persons and associations doing business in the State of New York, as merchants, bankers, or otherwise, either as principals or partners, whether special or otherwise, and non-residents of the State, shall be assessed and taxed upon all sums invested in any manner in such business the same as though they were residents; and the said tax shall be collected upon the property of the firms, persons or associations to which they severally belong."

We have, therefore, the general principle that every resident of this State pays a tax on his personal estate and all his real estate; we have a provision that all the real estate within the territorial limits of the State, whether owned by citizens or non-residents shall be taxed; and then we have that provision to which your attention has just been called which declares that every man, not a resident of the State, having money invested in this State, shall be assessed and taxed on all sums so invested in the same manner as residents. Then follows a description declaring what shall be lands, and then follows a description of what shall be personal property liable to taxation, to which I will call the attention of the committee for the purpose of showing that it is broader than the language of the amendment of the gentleman from Chautauqua [Mr. A. F. Allen]. The statute says:

"The term 'personal estate' shall be construed to include all household furniture, money, goods, chattels, debts due from solvent debtors no matter how created, whether on account of contract, risk, bond and mortgage, public stocks, or stocks of moneyed corporations."

So that we have here a definition of personal estate which embraces every species of property which does not come within the definition of real estate. So that with the law, as it now exists, there is no difficulty whatever in reaching every description of property which is found within the territorial limits of this State. So far, therefore, there will seem to be no necessity for the

first portion of the amendment of the gentleman from Chautauqua; because that portion of the amendment is that "the Legislature shall provide for a uniform rate of assessment and taxation upon all the real estate and personal property within the State, whether owned by citizens or non-residents, including all associations, corporations, domestic or foreign, bankers, bank shares, brokers, merchants or others doing business in this State, or having a place of business therein, or having capital invested therein for the purpose of carrying on such corporation, business, trade, or manufacture." Every portion of that amendment, is now found in the statutes of the State, passed by the Legislature in the exercise of the power of taxation necessarily vested in it as the representative of the sovereign power of the State. Therefore there would seem to be not only no necessity for the insertion of that portion which is the first branch of the section of the minority report, but rather an objection to the introduction of that, as it might seem to imply some doubt in regard to the effect or construction of existing statutes. The second portion or second branch of the amendment of the gentleman from Chautauqua, creates, what is to the people of this State, an entirely new rule and new mode of bringing to the surface, as it were, the property which may be liable under the statute, and under the Constitution to taxation; providing for nothing more nor less than a return by the citizen under his oath, of the property in his possession which may be liable, under existing laws, to taxation—a sworn return of all such property at its actual cash value; for the rest of the section, I presume, does not apply to this branch of the article providing for a return. The language is:

"Such assessment shall be made on the sworn return of the owner, manager, agent, or person having such property in charge, and on its actual cash value."

Now, I am opposed to this method of ascertaining what property is liable to taxation. So far as the real estate is concerned, there is no difficulty in respect to that. That can be seen by every one, and if the assessors will only discharge the duty required of them by law, properly and efficiently, and assess the property upon its actual value—not upon a fictitious or proportionate value, but upon its actual value—there will not be, in future, any real estate within the limits of this State escaping taxation. Now, if we are to levy any taxes whatever upon personal property, I desire that it shall be levied only upon such personal property as may be within the reach of the officer to whom the collection of the tax may by law be intrusted. I am opposed to anything in the way of an inquisitorial investigation, and especially under oath, in respect to the property each man may have. I am opposed to it for the reason (if for no other), which forms the ground of the objection made by the gentleman from Onondaga [Mr. Alvord] to the tax laws as they now exist, viz: that it will open the door to more perjury than could be accomplished in any other way. And if we needed any illustration of the evil effects of this mode of collecting taxes, or of ascertaining the value of property, we have but to look to the existing revenue laws for

the purpose of collecting the internal revenue tax under the laws of the United States, and to the practical operation of those laws, which is this: that the honest man pays upon every dollar which he owns, his full share of tax, while the dishonest and fraudulent man, who, under the protection of his oath, is secured from all responsibility, pays exactly what and no more than he is willing to disclose. Suppose a man makes his oath and returns a certain piece of property of a personal character, so much money invested in bank stock, so much in money securities, so much money held in business, so much on bills receivable, by what process is the officer of the law to ascertain and determine the correctness of that affidavit or oath, in whatever shape or form it may be made? If incorrect, how is the inaccuracy to be proved? and if proved, how is the man to be punished? These are objections of a practical character to the enforcement of this law, which have been found in the enforcement of the existing United States laws provided for the purpose of collecting the intended revenue tax. I do not know an instance in which any offense against such revenue laws has been punished, and I do not believe those who are intrusted with the enforcement of the laws have ever yet been able to make a complaint and establish it, and to bring to punishment a man who has been guilty of perjury under the internal revenue laws as they now exist. What is the effect of all this? Without bringing a single dollar more into the treasury, they have the effect of making the honest man pay a tax on every dollar he actually owns, and screening the dishonest and fraudulent man. Not only does it not bring a single dollar of revenue to the State, but it encourages perjury, and at the same time the man commits the perjury with perfect impunity, because there is no possible mode by which we can compel each individual to be honest. In other words, whenever an opportunity is afforded to a man to defraud the revenue by false statements, and when he feels that he can do it with impunity, men who would defraud the government by withholding a single penny justly due, would not hesitate to screen themselves by making false statements and swearing to them, feeling that these false statements could be made with perfect impunity, so far as temporal punishment is concerned. I submit, therefore, in the first place, that the laws as they now exist are full and ample, providing for every description of property subject to taxation; and all we require is the honest and efficient enforcement of those laws by capable, competent and honest men. By so doing we shall bring every dollar to the public treasury which we are entitled to bring, and which we ought to bring to it. I am opposed also to the principle of the third branch of this amendment, which is that "no deduction whatever shall be made from the assessed valuation of the property of any person, corporation or association, or the assessed value of any property, real or personal, by reason of any indebtedness due or to become due from the owner, person, corporation or association having such property in charge, or owning and controlling the property so assessed." It seems to me that the bare state-

ment of that proposition ought to be sufficient of itself to defeat that amendment. That a man really not worth a dollar, having in ostensible possession \$1,000, and owing \$1,000, should be required to pay taxes upon that thousand, ought of itself to defeat it.

Mr. HARDENBURGH—Is not that the case now with all real estate owners?

Mr. BURRILL—It is, so far as mortgages are concerned.

Mr. HARDENBURGH—Why should they be put in a worse position than personal estate owners?

Mr. BURRILL—There always has been a question in regard to the application of this principle of taxation, so far as it bore upon a piece of real estate subject to a mortgage. There is no doubt that a man who buys real estate worth \$10,000, and has mortgaged it for \$10,000, pays his tax upon the real estate, and the mortgagee who holds the mortgage for \$10,000 pays his tax upon the mortgage. One pays upon the real estate, and the other upon the personal property. But that is not the point to which I want to call attention. This section goes further, and says that "no deduction whatever shall be made from the assessed valuation of the property of any person, corporation or association, or the assessed value of any property, real or personal, by reason of any indebtedness due or to become due from such owner." Take that very case, of a man who has \$1,000 of personal property in his possession, whether it is a horse, household furniture, or anything of the kind, and who owes \$1,000. He is really worth nothing; and yet he pays a tax upon \$1,000. It cannot be sustained upon any principle of economy or any principle of honest dealing. Let every man pay a tax upon the property he owns, on what it is worth, whether real or personal property, deducting from it what he owes.

Mr. BICKFORD—Should not a man pay a tax on the property that he enjoys?

Mr. BURRILL—No, sir; not if he owes for it all, because the tax is already paid by the man to whom he owes.

Mr. ALVORD—I would like to ask the gentleman whether, in his opinion, from his knowledge of the matter, he does not believe that the personal property owned by residents in the city of New York to-day, is worth more than the entire real estate?

Mr. BURRILL—That is a question I cannot answer.

Mr. BELL—I did not design to detain the committee longer. I had hoped that the chairman of the Finance Committee, whose former report I have read with much interest, on the subject of taxation, would have taken it up and presented it to this Convention as he has in years past to the Legislature. He has not thus far undertaken the task. In all probability he will do so. It is a question of great importance to the people of this State. I shall not enter into any extended remarks on the subject, but merely examine very briefly the remarks that have been made by the gentleman [Mr. Burrill] who has just preceded me. He sets out with the statement that our present taxation laws are sufficient if they were properly enforced

Now, I assert that we have no uniform system of taxation in the State. I will admit that the laws are better than the practice under them, still the laws are very defective. The practice is simply a matter of capital or partiality on the part of the assessor. The laws are unequal, inasmuch as they require an assessment of real estate at its real value, and the whole deductions for indebtedness to be made from personal property. I am of opinion that the gentleman from New York [Mr. Burrill] did not give any good and substantial reason why deductions for indebtedness should be made from personal property that should not be made from real estate. In this I claim that the law is not good enough even if enforced. He also undertakes to controvert the position of the gentleman from Chatauqua [Mr. A. F. Allen], who made this minority report, and stated that our present laws do discover all the personal property. Now, sir, it is notorious, as has been stated by the gentleman from Onondaga [Mr. Alvord], that while our laws do discover all the real estate, because that cannot be hidden, they do not discover more than one-third or one-fourth of the personal property. Some few years ago I had the honor of serving upon a committee to investigate this subject. We made an investigation to a limited extent. The committee held a session in New York city and examined into the manner and mode of the assessment of property in that city. We ascertained, if my recollection serves me, that the whole amount of property on the assessment roll in that city that year was about \$580,000,000; that about \$400,000,000 of it was real estate; about \$100,000,000 of it was corporate property, and that only about \$80,000,000 of personal property was placed upon the assessment rolls in the entire city of New York. The committee inquired of those who came before them—and they were gentlemen of great intelligence and business capacity, one of them of the firm of Brown Brothers—if they thought one-third of the personal property of New York city was placed on the assessment roll. This gentleman said that his acquaintance in New York was limited compared with some other gentlemen, but he believed he knew persons owning as much personal property as that within his limited circle of acquaintances. He thought my estimate was much above the amount that was ever discovered and placed on the assessment rolls. It is notorious in every county of the State that our present laws and the practice under them do not bring out one-third of the personal property of the State of New York. The gentleman from New York [Mr. Burrill] objects to this article because it introduces new rules and a new system of taxation. In this consists its value. If it is valuable in any particular it is in this particular, that it does introduce a new system of taxation. There is nothing more necessary than a complete and thorough revision of the assessment laws and a new system, the basis of which shall be grafted in our present Constitution. Some time ago I took the trouble to examine the different assessment laws of other States; for that purpose I saw some gentlemen from other States and made certain inquiries of them on the subject of taxation in their respective States. I found

that the laws of those States which discovered and placed upon the assessment-rolls the entire property of the State, whether real or personal, gave the best satisfaction. We came to the conclusion that this desirable result could only be attained but by what is called the "listing" principle—requiring every tax payer to make out a list of his property liable to taxation—real and personal property—and state the value of it himself, either under oath or under the penalty that if he concealed or underestimated it his valuation should be doubled or four-folded. This would protect the State and also save him from what the gentleman fears—the crime of perjury. Whatever principle we may adopt with regard to this, I am satisfied that the listing principle is the only system that will bring upon the assessment roll all the property liable to assessment. Another objection that the gentleman urges against the proposed system is, that it requires all property to be assessed at its actual value. I had supposed the present law required that; but in this regard also, the practice is much worse than the principle. The practice, so far as I understand it, is to assess real estate at about one-third its value, and to assess personal property, so far as it can be discovered, nearly at its full value; so that really the honest man is oppressed while the ingenious rogue goes scot-free. The gentleman from New York also asserts that the system proposed by the gentleman from Chatauqua, introduces an inquisitorial system; that it necessarily obliges us to expose the private affairs of our neighbors. Is it inquisitorial to require a man to pay his fair and just share of the expense of the government that protects him? Is it inquisitorial to compel him to disgorge, as far as listing is concerned, the property he has in his possession or owns? Be that as it may, it is the duty of the State to compel every person to bear his or her equal share of the public burdens. Another objection he urged is that it produces perjury. I am unable fully to answer that question. Two plans are proposed on this subject one of which I think will avoid this objection. If a man gives a dishonest and untrue account of his property liable to assessment, let the officers double or four-fold his property, or add a certain percentage to his tax; by this plan you will make it for the interest of all liable to taxation to give a true list, and avoid the possibility of perjury. Our internal revenue laws have been referred to as being inefficient. It is stated that no person is ever brought to justice who makes a false or inaccurate return. However it may be in this regard in New York city, I knew an instance to the contrary in the city of Albany; a very distinguished gentleman in this city was actually prosecuted for making a false return. The case was quite notorious; and I think it had a salutary effect on him and others who understood the matter. It is said that all we want is an honest administration of the present law. The present law cannot be honestly administered. It is not honest in its principles; and there is no power to administer it honestly or to compel its honest administration. I would like to inquire of the gentleman, or of any other gentleman, what power there is to correct an error

in the assessments of the assessors of your towns. Is there any appeal from their decision? They may assess my farm at three-fourths of its value and your farm at one-fourth of its value. Where is the power of correction? Where is the power or court to which I can appeal. Neither you nor I can say that our farms are assessed at more than their value. Yet there is great inequality in the valuation. We never shall have a correct and equal assessment until we have a system that will call the assessors of towns to an account, and will call the boards of equalization of the different counties of the State to an account. We never shall have a correct system of assessment until we provide for appeals from town assessors to some competent county authority, and thence to a board of State assessors if the parties choose. The gentleman proposed the question: Should there be an abatement on personal property? and argues that there should be such abatement. I would like to have any man demonstrate here that a man should be allowed to abate his indebtedness from the valuation of his personal property, and deny him the right of abating his indebtedness from real estate. A man buys a farm, and owes for a portion of the purchase; he is supposed to be assessed for it at its full value as compared with other farms in the town, without regard to his indebtedness therefor. Should he purchase on the same terms an equal amount of merchandise he may claim an abatement for the unpaid portion of the purchase-money. I contend that a man should be assessed for all the property he has in his possession for the purpose of comfort or gain. If I buy a quantity of merchandise on credit, for which I have incurred a liability on the part of the State, county or town for its protection, I should be liable to taxation as well as all other risks upon that property. I am liable to the insurance and ought to be liable to the taxes upon it. The laws of the country protect that personal property for me. If some fraudulent purchaser obtains a portion of it I can call upon the courts of the country for protection. Again, I have bought that merchandise for the purpose of speculation. If, in the outset, I understand that I am to pay taxes upon it, as well as insurance and other expenses, there will be no injury done me in the case. I contend that personal property should not be permitted to have immunity granted to it of abatement on account of indebtedness any more than real estate. We should not establish the principle that a man shall pay taxes only on what he owns, but that he shall pay taxes on what he possesses for the purpose of profit or gain or comfort. Until we conform our rules to this principle, they will continue to be defective, and the honest men of the State will be liable to bear more than their proper proportion of the burdens, and the rogues will continue to say the present law is good enough. I do not know how far it may be necessary or proper to go on incorporating the entire sections which have been reported by this committee in the Constitution. What I desire is to incorporate some general principle in the Constitution that will lead to a correct system of taxation in the State, that all the property may be assessed and bear its equal proportion in the burdens that are necessarily im-

posed upon the tax payers of the State. Can there be any harm in adopting a constitutional provision that will require subsequent legislation to discover all the property? Is there any wrong or any injustice in taxing property at its full market value, which is now only assessed at one-third of its value? Will it increase the amount of taxes in the town, county or State? It will only lessen the percentage. It will give greater satisfaction. What our people desire is a knowledge that all the taxes that are levied are necessary for the government of the State, or of the county, or of the town, or of the locality, and then that they are equally assessed.

The gentleman's time having expired, the gavel fell.

Mr. PIERREPONT—Mr. Chairman—

Mr. HALE—If the gentleman will give way I will move that the committee rise, report progress, and ask leave to sit again.

Mr. PIERREPONT—I will.

The question was put upon the motion of Mr. Hale, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. SMITH, from the Committee of the Whole, reported that the committee had had under consideration the reports of the Committee on the Finances of the State and of the Committee on Canals, and had made some progress therein, but not having gone through with the same, had directed their Chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave to sit again, and it was declared carried.

On motion of Mr. WALES, the Convention adjourned.

FRIDAY, September 20, 1867.

The Convention met at nine o'clock, A. M.

Prayer was offered by Rev. J. ELMENDORF, D. D.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. ALVORD—I give the following notices:

That on and after Monday next I will move a call of the roll immediately after the reading of the Journal each day; also that I will on Monday move that all matters now on general orders, and all hereafter referred to the Committee of the Whole, shall, after being read through in Committee of the Whole, be immediately reported and considered in Convention.

Mr. GERRY—I call up for consideration the resolution offered by me yesterday.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the commissioners of the board of excise of the city and county of New York, be requested to furnish this Convention, as early as practicable, with a tabular statement showing:

1. The number of licenses granted by them from the time of the creation of the board to the present time.
2. The gross amount received by them for such licenses.
3. The number of complaints preferred against such licenses during the same period by the police.

4. The number of complaints preferred against such licensees by persons other than policemen during the same period.

5. The number of licenses revoked during such period.

6. The number of complaints not sustained during the same period.

Mr. GERRY—I have modified this resolution to meet the views of some gentlemen who the other day tabled it. I think now it is free from the objections which arose in consequence of an amendment having been accepted by me, which amendment extended the information required, further to enable it to be furnished within the shortest possible time.

The question was put on the resolution of Mr. Gerry and it was declared adopted.

Mr. MERRITT—I call up for consideration the resolution offered by me yesterday.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the Committee on Revision be instructed to amend the article on the "militia and military officers" as follows:

Strike out the words in the sixth line of the third section, "the Governor" and insert the words "and he" and strike out all after the words, "major-generals" in the seventh line and insert the following:

"All officers responsible for the military property or funds of the State, shall give such security for the faithful execution of the duties of their respective offices, as the Legislature shall prescribe."

Mr. MERRITT—I was not present when the report of the Committee on the Militia and Military Officers was under consideration, and this amendment is drawn for the purpose of striking out the manner of appointing the commissary-general. That is an exceptional case in requiring, under the article as reported, that he also give security for the faithful performance of the duties of his office. The object is to make the provision general, so that all officers responsible for the funds and property of the State shall be required to give such security as the Legislature may prescribe. Under the old Constitution the commissary-general was the only officer at the head of a department, who was required to give bonds for the faithful performance of the duties of his office. There is no reason why there should be any exception in the case of the commissary-general. He should not occupy a position different from any other of the staff officers. His term of office should be the same as the Governor's. He is now declared to be a staff officer by law; it is putting him exactly on the same footing as other members of the staff. I think it is very proper that all officers should be required to give security for the faithful performance of the duties of their office. I understand this meets the hearty concurrence of the committee on that subject.

Mr. VERPLANCK—I am a little surprised, knowing the gentleman's connection on the Governor's staff. My impression is that the adjutant-general thinks it is right as it is now. Does the gentleman know the views of the adjutant-general on that subject?

Mr. MERRITT—It meets his views.

Mr. VERPLANCK—All right then, sir.

The question was put on the resolution of Mr. Merritt, and it was declared adopted.

Mr. YOUNG offered the following resolution, and moved that it lie on the table:

Resolved, That the Committee on Revision be instructed to amend section 4 of the article on the right of suffrage and the qualifications to hold office, so as to read as follows:

SEC. 4. Laws shall be made for ascertaining by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established.

Which was laid on the table.

Mr. HARRIS offered the following resolution:

Resolved, That the Committee on Revision be instructed to insert in the second section of the article on counties, towns and villages, etc., after the word "towns," the word "cities," so that the section shall read as follows:

SEC. 2. Counties, towns, cities and villages shall severally possess and exercise such powers of local taxation as now are or hereafter may be prescribed by law.

The question was put upon the resolution of Mr. Harris and it was declared adopted.

Mr. MURPHY—I ask leave of absence for my colleague, Mr. Livingston, until Tuesday next, he being unavoidably detained at home.

Mr. ALVORD—I would like to ask the gentleman what is the reason Mr. Livingston is unavoidably detained. If it is on account of sickness I have no objection, but if it is on business I do object.

Mr. MURPHY—I am unable to say what the reason is. I received a telegram from him, the effect of which I have stated. He did not state the cause. I believe it is the first request he has made to be absent, and I do not know why it should be refused.

Mr. ALVORD—I wish to correct the gentleman in saying that it is his first request. He has been absent upon application a very considerable number of times during the session of this Convention. I hope the leave will not be granted.

The question was put upon granting leave and it was declared carried, on a division, by a vote of 50 to 32.

Mr. LAPHAM—I ask leave of absence until Monday evening for my colleague, Mr. Hadley. He has been called to New York by the illness of his father.

There being no objection, leave was granted.

Mr. AXTELL—I ask indefinite leave of absence for Mr. Baker, of Montgomery, on account of illness.

There being no objection, leave was granted.

Mr. CLINTON—My wife is ill and I feel it is necessary that I should be absent on Saturday and Monday in order to make provision for her comfort. I therefore ask leave of absence for that time.

There being no objection, leave was granted.

Mr. VERPLANCK—Mr. President, I yesterday asked leave of absence for myself because it was necessary that I should hold court in Buffalo next week; but one gentleman was kind enough to move the previous question on the matter, so that I could not make the explanation I desired. I therefore withdrew the request from the con-

consideration of the Convention. I now renew the request for leave of absence for next week.

There being no objection, leave was granted.

Mr. PAIGE—I ask leave to present the remonstrance of the members of the Faculty of Union College, against the abolition of the Board of Regents of the University of the State of New York. Also, the remonstrance of the trustees and instructors of the Canajoharie Academy, on the same subject.

Which were referred to the Committee of the Whole.

Mr. GOULD—I ask leave to present the remonstrance of Rev. Alonzo Flack, the principal, three professors and seven trustees of the Hudson River Seminary at Claverack, on the same subject.

Which took the same reference.

Mr. WAKEMAN—I desire to present the remonstrance of the trustees and instructors of the Rural Seminary of East Pombroke, in the county of Genesee, on the same subject.

Which took the same reference.

Mr. REYNOLDS—I ask leave of absence for my colleague, Mr. Fuller, until the session of Tuesday morning. He has been obliged to go home on account of sickness.

There being no objection, leave was granted.

Mr. TAPPEN—Judge Paige is laboring under indisposition. I ask leave of absence for him for the coming week.

There being no objection, leave was granted.

Mr. M. I. TOWNSEND—I desire to ask leave of absence for myself after this morning's session until Monday evening. I do it in consequence of having sickness in my family, that has already claimed my absence. I think I ought to be absent for that purpose, but only after this morning's session until possibly, Monday evening. I may be able to be here by that time.

There being no objection, leave was granted.

Mr. RATHBUN—I was not aware of the change which has taken place in regard to the adjournment of this body. I have business that requires my presence at home to-morrow. I therefore ask leave of absence until Monday evening.

Mr. ALVORD—I shall have to object.

The question was put upon granting leave of absence, and it was declared carried.

Mr. FOLGER—I ask leave of absence for the same reasons as the gentleman from Erie. I having referee's business, and it being a matter of public business.

Mr. RUMSEY—I object.

The question was put upon granting leave of absence, and it was declared carried.

Mr. E. BROOKS—I move, and I make the motion in justice to all the members of this Convention and for a good reason, that when this Convention adjourn to-morrow it adjourn to meet on Monday evening next, and in defense of that motion I desire to say that, for one, it is physically impossible for men to meet here at nine o'clock in the morning and sit through three sessions of the day and discharge their duties with any fidelity to the State, and go through with this sort of labor day after day. I, therefore, make this motion.

Mr. ALVORD—I wish gentlemen of this Convention who have made up their minds deliberately that we are to go to work and to undertake—(and hoping to succeed in that undertaking) to complete our labors in time to submit the result to the people of this State, they will pause before they take any such step as this. It is absolutely necessary now that we should use every hour and every moment from the present time until the 10th of October, because it is useless to talk about submitting, either satisfactorily to ourselves or to the people of this State any earlier or any later than the 10th of October, the result of our deliberation; and it is a physical impossibility to get through with the work, doing justice to it, upon our part unless every one of the secular days between now and that time shall be employed fully and completely in the work. Every one knows that a simple adjournment until Monday evening at seven o'clock, with the understanding that it is done for the purpose of accommodating members, means an adjournment until Tuesday morning; and here upon the heel of this session, when we have determined to go forth with this business to the end, without any attempt on the part of either political party of this Convention to adjourn, I say it is perfectly plain, if we go on in the way we have gone, we have got just twelve days to do this work in. We have practically to-day, by the absence of members from this body, put ourselves in the position almost of the want of a quorum. We do it each and every week. We meet on Monday evening, it means Tuesday morning, and with a great deal of difficulty up till 12 o'clock on Tuesday, do we get along for want of a quorum. We have Wednesday and Thursday. Friday about 12 o'clock we begin to want a quorum again, so that virtually we meet but three days in the week. That is what we are undertaking to do now by our action this morning. I tell the gentlemen who hold the political majority in this Convention, they are the ones to blame if they do not hold this matter directly up, and hold the members of this Convention, so far as their action is concerned, to the entire fulfillment of their whole duty. I trust, therefore, sir, that at least that portion of this Convention will not be found to be recorded in favor of the proposition of the gentleman from Richmond [Mr. E. Brooks]. I call for the yeas and nays upon it.

Mr. RATHBUN—I belong to, and vote with, the responsible men of the Convention here, [laughter] and I propose to be responsible for my own conduct. I have endeavored to be present here as much as possible, and have been, since this Convention opened. I have endeavored to do my duty honestly every day and every hour, and I have worked in this Convention from nine o'clock in the morning until ten and eleven o'clock at night, with three sessions a good many days, and even until half-past one o'clock one night. I am satisfied that I have done my duty and worked as much as anybody had a right to demand of me. Having done that, I claim no indulgence from the people that sent me here or anybody else. If they do not like my services I am entirely willing to quit even with them, and

let them read somebody else in my place. It is perfect nonsense to talk about getting done with the labors of this Convention by the 10th of October. There is not a man here of either party who does not know it cannot be done. What is the use of shamming toward one another, when we know this thing cannot be done. Why not meet it like men on all sides and acknowledge the fact. I do not hold anybody responsible, nor do I blame anybody for it. I insist such is the fact, and whether we are chargeable with not working fast enough, is a matter we can decide for ourselves; and if the people do not like it, all they have to do is to select better men the next time. [Laughter.] Now, we have done a great deal of work, and the general proposition is among the newspapers that we have done a great deal of talking. I have one of them here now, which talks about a knife sharpener on the fair ground spouting like a member of the Convention. [Laughter.] We are all a little inclined to talk. I take my share of it and I do not skulk it at all. [Laughter.] I am responsible for that too; but I like to talk long enough to be understood, and I want other gentlemen to talk long enough so I can understand them. I want to be right. I do not believe I know enough to come here and pursue the business of amending this Constitution without learning something from somebody else. I have been trying to learn, and when I have learned I have followed as straight as I knew how in the right direction as far as we have got. I must say I am very well satisfied with our work, and I am confident the people will be. I do not believe in spoiling it now by being in a hurry. We are on the question of finances and canals. We cannot close it and work faithfully ten hours a day short of just about one week. You have the whole question of the management of the canals yet to take up, discuss and dispose of. You have yet the question of taxation, which is a question of more importance than any one before this Convention, standing alone, and one in which the whole body of the people are more deeply interested. They desire that shall be settled right, so that the poor man, when he digs down into his pocket to hunt up the odd pence to pay his taxes, may feel that he is not paying it on unequal and unjust grounds, and I desire to see it settled so because I know very well how that is. Before you have got through with this question of finances and canals you have taken one week, then comes a day or two days' work on the report of the Committee on the Powers and Duties of the Legislature. It is pretty much finished, but it will take a day or two more. Then comes the question of the judiciary, which is not yet taken up. The whole system of the judiciary of the State is proposed to be remodeled, and, in my judgment, ought to be pretty much, if not entirely to remodeled. That is likely to take two or three weeks, and with all the benefit of the light and experience derived from the Constitution of 1846. Then comes the question of charities, upon which subject we have a very able report, which will take time to discuss. I propose to talk about it, unless somebody says what I think ought to be said, at the risk of being called a chatter-box. That report will take some days. Then comes

the question of future amendments. There is not much of that. Then comes cities. You have questions there to settle of the very highest importance. You have questions there to settle affecting the principal cities of the State, and they are represented by men who are able to present their claim to changes and alterations in regard to the management under which they have been controlled. Other gentlemen will try to defend, and perhaps successfully, the position taken in regard to the management of cities. It is a great question, and one entitled to be discussed ably, thoroughly, and until we can master the subject. I desire to be able to do so, so that when I go home I can tell the people I voted for the best reasons and to be able to give them, because I intend to obtain them from gentlemen of ability who can enlighten me. Then comes the question of education, a vast question, requiring time. It cannot be done in a hurry, and we have no business to hurry. Then comes the question of State prisons. Next to the canals, they are in the very worst disorder that can possibly be imagined and require an entire overhauling from the garret to the cellar. Money is wasted in every possible way. I hope to be able to satisfy the Convention when that question comes up, that when we get down from the high notions we have about managing State affairs, to the little simple home process of doing things in a quiet and unostentatious manner, we can thus find safety, security and economy. That will take a good deal of time. Then, sir, here are several committees which have not reported yet. I am sorry to say that, because it is almost tantamount to a charge of neglect of duty. The Committee on the Preamble and Bill of Rights. Now, what can we do without that report? Who is to christen this work of ours, when it is done, without the bill of rights? The Committee on Industrial Interests (which subject occupied a good deal of time, and for which a special committee was made), have afforded us no light upon that subject. The Committee on Salt Springs. My friend from Jefferson [Mr. Bell], the chairman of that committee, has taken a great deal of pains to investigate that matter. He has carried his committee to Syracuse to taste of and look at the water and works and to investigate their value and the amount of income they produce. He is prepared to make suggestions here which may be considered worthy of careful consideration and examination, and entitle that report to be considered and weighed. The great question of selling and disposing of these works is one that is presented for the consideration of this Convention. That will consume time. Then comes the Committee on the Indian tribes. They have not reported yet. Whether they will embrace anything beyond the Mississippi or not [laughter] I do not know; but we have a few Indians here and they have been considered worthy of a committee, and we are to hear what is to be said about them. Then comes the Committee on Privileges and Elections. I do not understand precisely what that means, but I have no doubt it is some question of very great importance [laughter], which will require time.

Mr. LOEW—The committee has not met yet.

Mr. RATHBUN—Talk about getting through

the 10th of October when that committee have not yet met.

Mr. BUMSEY—What does the gentleman think about poor liquors?

Mr. RATHBUN—The gentleman has anticipated me in what I was going to say. The next topic is the adulteration of liquors. That committee has not reported yet, and the emissary who was on his way here for the purpose of enlightening us has been taken sick, and he is reported by the chairman of the committee as still sick. What can we say about liquors until that gentleman arrives, so as to inform the committee. I insist upon it that here, again, is a difficulty in the way. Liquors must be provided for. [Laughter.] The question of adulterations is one that ought to be considered thoroughly by this Convention before they are used.

Mr. VERPLANCK—I was going to say that a very much more important question before that committee was the one insisted upon in the petitions, perhaps of 25,000 to 30,000 citizens, that there shall be prohibition in the Constitution against the sale of liquors.

Mr. RATHBUN—That is involved in this very question. I do not mean that that committee will spend all their time in arranging the question of the purity of what is to be sold. [Laughter.] The question of sale is involved. Now, sir, next to liquor, comes the Committee on Corruption. [Laughter.] I think it is properly located, because, I think, of all the things in the world the two worst are bad liquors and corruption. [Laughter.] We have no report yet from that committee. I do not blame that committee, because where such a mountain of corruption has been thrown upon the heads of the committee, we can see very well it will take time, a week or two, to look around, dig out and see the amount of corruption which surrounds them, and reduce it to form in order to report to this Convention. They must have time to consider this subject. Then there is the Committee on Revision. Even if we get through here by the 10th of October, supposing we have run through with this work—which will take more than two months of untiring and uninterrupted labor to get through with the work as it ought to be done—supposing we get done by the 10th of October, then what? The Committee on Revision cannot run over this work after it is done, and present it to us in a presentable form in two weeks. I am willing to stay and work as long as I possibly can, and accommodate gentlemen with my time, assistance and labor, and present this work by the 10th of October, but I know it cannot be done.

Mr. KINNEY—My doctrine is that as long as we stay here we should work, and work hard, but not work so fast that we shall be ashamed of it when it is done, but work in order that we shall make it perfect as far as we may, and when we find we cannot complete it, as gentlemen will find by and by, then, I apprehend, some of them will have the good sense to say we had better fix upon a day of adjournment. I think the sooner we turn our attention in that direction the better it will be for us all. We have all got to go home and go to work. I have staid here until I shall be compelled to go home and go to work pretty

soon, or call upon the overseers of the poor. [Laughter]. I do not like to do that. I desire we should be open and frank. I speak for myself, and I mean to be frank. I ask the gentlemen on the other side, who say they are democrats, and I think sometimes I am myself [Laughter], to say whether I am right or not.

Mr. HALE—I wish to ask the gentleman from Cayuga [Mr. Rathbun] whether he is for or against the resolution which has been proposed by the gentleman from Richmond [Mr. E. Brooks], now before the Convention?

Mr. RATHBUN—On the subject of adjournment?

Mr. HALE—Yes, sir.

Mr. RATHBUN—I am for it because I have asked leave of absence and have got it. I do not ask gentlemen to stay here and work when I go away.

Mr. BECKWITH—I concur with the remark made by the gentleman from Onondaga [Mr. Alvord], that the political majority of this Convention is responsible to a great extent for any neglect of duty here. I believe that every gentleman who consented to come to this Convention is bound to remain here and labor for the good of the State, but there has not been in my opinion any waste of time in the discussion of the reports of the committees on the provisions proposed to be adopted. I have listened to all the discussion of the reports of the committees on the main questions submitted to us with a great deal of pleasure. Now, if the gentleman from Orleans [Mr. Church] will permit me to refer to him as an instance to illustrate my view, I will say that he, as chairman of that committee, has been permitted to occupy considerable time, yet I do not think that gentleman has occupied any more time than he should, nor has anything dropped from him in the discussion of the finance and canal policy, to which I have not listened with a great deal of interest. I have received much information from his remarks and the discussions of other gentlemen of the different propositions submitted to our consideration. It is not to be supposed that those of us who come up to this place to frame a Constitution are familiar with all the wants of this State and all the questions that have come before us in the framing of an organic law. We came here with a limited knowledge of the condition and wants of the State and to obtain full information and then to frame an organic law. If I am correctly informed the Convention of Massachusetts occupied about seven months in framing their Constitution, and yet every gentleman knows there are very great, grave and important questions before this Convention, questions that did not come before that Convention. They have not the canal system which we have. If that convention occupied seven months certainly this Convention ought to have at least an equal time. I am satisfied further and concur with the gentleman from Cayuga [Mr. Rathbun] that we cannot complete our labors with justice to ourselves and to the State, in time to submit our labors for the people to examine the same before the next election. But, still, I am in favor, while we remain in session, that we should faithfully attend to the business of the State, and I think if

gentlemen do, as many of us from the remote part of the State do, stay over the Sabbath, we can do considerable work on Saturdays and Mondays. Gentlemen complain we work a good many hours in the day. True, we do. We came here for that purpose. We receive a compensation for that labor. That compensation to me is no consideration whatever. It is nothing in comparison to what my services would be worth at home. Still, having consented to come here, I am willing to stay and attend to the duties devolved upon me; to work all proper hours; to work Saturdays and Mondays, and I think gentlemen should consent to stay here, especially the political majority of this Convention, so that it cannot be charged that we have wasted time in this particular; for the waste of time has not been in discussion; it has been in the particular now referred to. We have not worked on Fridays, Saturdays and Mondays, as we ought to in my judgment. I hope while we stay here we shall work on those days, or at least Fridays and Mondays.

Mr. E. BROOKS—I wish to say a single word in behalf of the resolution I have submitted to the Convention. Let me say to my friend from Onondaga [Mr. Alvord] that he has a great advantage over gentlemen of moderate physique. He belongs physically to the race of Titans and giants, and can endure a great deal more fatigue than many other gentlemen of this body. I can say for one, constituted as I am, and I think I can speak for other gentlemen, it is physically impossible to stay in this Convention for ten or twelve hours a day and discharge our duties upon the important subjects under consideration and remain here through the six days of the week. I am not capable of it for one. I came here with a sincere desire to discharge my duty intelligently to my constituents and in the interests of the State. I hold it is absolutely necessary, if these duties are to be properly performed, that some little recreation should be allowed the members of the Convention. But, sir, if the appeal is to be made to the political majority of this body, if they are to say to the minority, because we have the power to do this we are determined to accomplish it, of course we must surrender all appeals of this kind and all appeals to the justice of the Convention itself. I hold, sir, that in the discussion of a question like the one now before the Committee of the Whole, introduced by the gentleman from Chautauqua [Mr. A. F. Allen], involving in the question of taxation millions and millions of dollars, so largely affecting the commercial interests of the city of New York—an immense question, and intended, in my judgment, to destroy much of its business, we ought to deliberate wisely and act with caution. Differing entirely from him, I hold that in the discussion of a question like this, requiring reference to public documents, and reference to the business of the cities, it is wholly impossible to deliberate in a becoming manner short of a full week's time, certainly short of three or four days. There are also other questions to be considered in connection with this. Sir, we do not have a quorum here from day to day, and why not? Because, in part, for the reason that members are physically unable to sit here day after day for ten and twelve hours a day. Why is it

so many leaves of absence are granted? Because you hear from the motions which are made that gentlemen are absent because they are unable to be here and sit so long. This kind of work is not what any deliberative body ought to attempt, especially in the amendment of a Constitution. Sir, the great mistake of this body commenced at its very organization, and I am willing, for one, to share in the consequences of that mistake. Instead of undertaking to make a new Constitution, as we have undertaken to do, and organizing ourselves as we have into the formation of some twenty odd standing committees, we ought to have taken the Constitution of 1846 and gone into committee of the whole upon it, and taken it up section by section and amended it so as to secure perfection if possible. If we had done this, undoubtedly our labors would be closed at the present hour. This has been our mistake, and we must take the consequences of it. I hope, sir, this resolution will be adopted, because I desire there may be a full attendance here when this question is up for consideration.

Mr. LAPHAM—Does the gentleman remember I offered a resolution to that effect the second or third day of the session?

Mr. E. BROOKS—I do not remember that this is so. I think it is not the fact, but if so it was unwise not to adopt it.

Mr. LAPHAM—Does the gentleman recollect that on his motion it was laid on the table?

Mr. E. BROOKS—It may be so. But what is the result of a motion to lay upon table? It is that we may have time to consider the subject. The gentleman introduces, I grant, an important resolution, like that which he has suggested, and it is for the Convention to say whether it will enter upon that order of business or not. It could have been taken from the table at any time, and it is the fault of the gentleman from Ontario [Mr. Lapham], that he did not move to take it from the table.

Mr. M. I. TOWNSEND—As the gentleman from Onondaga [Mr. Alvord] has appealed to republicans as such to vote against the resolution offered by the gentleman from Richmond [Mr. E. Brooks], I for one feel disposed to say that as a republican, I feel that I am doing my duty as well as any member of this Convention can do in voting for that resolution. I am very happy to say that since the first day of our session we have upon this floor practically forgotten our position as republicans and as democrats, and it may be the proud boast of the minority, politically in this Convention that they have conducted themselves, apparently, at least, without respect to party organization for nearly the entire session. There has been no waste of time in this Convention on their part with the exception of a single case from a single gentleman not necessary to specify here. There has been no delay in this Convention with mere party discussions, designed simply to promote the interest of party. But we have had, at stated intervals, from about three gentlemen on this floor, very severe lectures to the majority as to their doings. There has been more said upon this floor by republicans against the conduct of republican members of this Convention, as republi-

cans, I think, than has been printed in the public press or spoken by democrats upon this floor from the time we commenced the session down to the present moment. We seem to have adopted the English system with a slight variation. Parties in the British Parliament have what is called "whippers in." We seem to have adopted the system. [Laughter.] I would not include my friend from Onondaga [Mr. Alvord] as one doing the duties of that office, but a gentleman, I do not see now in his seat has seemed to act sometimes in that capacity. I do not hesitate to say that I am utterly opposed to this English system. Let it not be forgotten that a very large majority of the people of this State had not, when this Convention was called, made up their mind that they wanted any change in the Constitution of the State. The people of this State are not dying now to make this change. There is not a single case of protracted sickness from hope delayed in the State of New York in consequence of not having the Constitution changed. All the people of this State want, is now that we have come together to deliberate, that we shall deliberate in such wise as men of sound minds in sound bodies can deliberate. I do not hesitate to say that this Convention owed it to itself, to the health of the members, and to the mental status of the members, to have taken a recess during the hot weather. We have sat continuously here through the hot and most oppressive season of the year, and there is scarcely a gentleman of this Convention, that does not feel it in his own person, in his own nervous organization, and in his own mental condition. I believe no fault will be found by any party or any body of intelligent men, if this Convention should move with that deliberation which is necessary for any body of men to move in the discharge of their duties. The people of the State of New York know that we are all men; that we have the feebleness of men and that we have the physical and mental organization of men; that the same necessities attach to us as to other men. We cannot do every thing. There is but a single instance in this Convention of a man who can work day and night from week to week without rest, I mean without rest other than he gets in the Convention. [Laughter.] We have got to have rest. I had to absent myself from the session of last night because I had attended three sessions in the day preceding. I mean to do my duty when permitted to do it as faithfully as any individual. But my strength would not permit my attendance last evening, and I do not mean to apologize either to my constituents or to my party, or to the opposite party, for being simply one of the sons of Adam, with all the weaknesses that attend that race. Now, sir, I shall vote for this resolution, and my friend by my side [Mr. Rathbun] well says there is more prejudice created abroad by the reports of certain speeches made in this hall than has arisen from any other source. I verily believe my friend is right in his suggestion. I shall vote for this adjournment, although the Convention has kindly, in consideration of my peculiar domestic anxieties, given me leave of absence from the session to-morrow and Monday. I believe it is due to the members of the Convention to vote, as I shall vote,

in favor of the resolution of the gentleman from Richmond [Mr. E. Brooks].

Mr. HALE—As we seem to have resolved ourselves into a sort of conference meeting, I propose to state very briefly my experience and my conviction in regard to this matter. I wish to say one word in regard to a remark made by my colleague [Mr. Beckwith], in relation to the responsibility of the political majority for whatever delay or neglect of duty there may have been in this Convention. Now, Mr. President, I am willing that the political majority should be charged with whatever belongs to them, in regard to any mistakes that have been made, if any have been made in this Convention. But I am a believer in the doctrine of personal responsibility. I do not believe that when a democratic friend of mine takes the oath, such as we all took at the commencement of this Convention, that he would faithfully discharge his duty as a member of this Constitutional Convention, he came under less obligation to work faithfully and well in this body than I did, because I am classified with the political majority of this Convention. I believe that every man here has his duty to perform, and, if I have neglected my duty my energetic and industrious friend from Onondaga [Mr. Alvord] is not responsible for that—because we belong to the same party. I alone am responsible. Just so with our democratic friends. If they have neglected their duties here (and I do not charge that they have), they cannot excuse themselves upon the idea that they, politically, are in the minority here. Now, Mr. President, I fully agree with some of the remarks made by my friend who just took his seat [Mr. M. J. Townsend] in regard to what are the duties of the members of this Convention. I do not believe we are bound to sacrifice our own health or lives, where it is not called for, to what we may regard as our duties in this Convention. I do not believe it is a part of our duty to remain here and listen to talk, and talk ourselves, from morning until night. I think all the State requires of us is a reasonable degree of labor, and a reasonable portion of our time spent in this way, and for that reason I voted against the resolution which was introduced and adopted, providing for three sessions daily. I do not believe anything is gained by working such an extraordinary number of hours. I believe in the loss of vigor, in the loss of ability to work, we lose more than we gain by the additional number of hours we spend. I think if we should sit here in the morning from nine to two, and then adjourn until half-past seven, and sit every evening a reasonable number of hours, we would actually accomplish more work; we would be surer of a quorum during these sessions, than in holding a session in the afternoon and another in the evening. As to the motion of the gentleman from Richmond [Mr. E. Brooks], I think it ought to be adopted. I incline to that opinion with this qualification, that we ought to be here on Monday evening, unless we are prevented by circumstances beyond our reach. We ought to be here and have a *bona fide* session Monday evening, and not a sham session. I am inclined to think, however, we had better work on Saturdays. There is no reason for so long an intermission.

Mr. E. BROOKS—This provides for a Saturday session.

Mr. HALE—With that understanding I shall vote for the resolution.

Mr. KINNEY—It is remarkable that all these complaints that are heard about work and overwork and physical exhaustion and dangers of approaching dissolution in consequence of labors performed here, come from gentlemen who reside in the immediate vicinity of this capital, those who take the railroads and steamboats and go to their homes in a very few hours. We hear no such complaint from gentlemen from remote portions of the State, who are compelled to remain here seven days in the week; they are not complaining of overwork. My judgment is, that no man is overworked in this Convention. We have not averaged four days of labor in the week during the sessions of this Convention—not four days in the week. I do not doubt but that we work more hours per day than is beneficial to us in point of health, but I do not believe in working twelve or fourteen hours in the day and then resting two days to make up for it. We had better have our sessions regularly six days in the week, and work a reasonable number of hours each day. But this constant adjourning over from Friday to Tuesday is the work of men who can go to their homes and return again, while we are compelled to sit here and exhaust ourselves physically and mentally by having nothing to do but to hang about the city. During the three days that they are at home we are compelled to undergo all this inconvenience here on their account. Now, the true policy of this Convention is to work as other people work, to work as our constituency expect, to work six days in the week, and not an unreasonable number of hours in any one day. Then no man will complain of physical exhaustion, or be in danger of ill health in consequence of his labor. I am opposed to this resolution. I am opposed to adjourning over from Friday until Tuesday, which is really the result of our adjournment.

Mr. E. BROOKS—My resolution does not propose to adjourn until to-morrow (Saturday).

Mr. KINNEY—I am aware it does not propose an adjournment until to-morrow, but the effect is, and ever has been, to have no quorum on Saturday and no quorum Monday, and it is in effect every time to adjourn from Friday until Tuesday. I protest in behalf of those gentlemen who are compelled to remain here seven days in the week and substantially labor those seven days, in behalf of the gentlemen residing in remote portions of the State. I protest against such an adjournment. Let us work like men, as our constituents expect us to work, and when we ascertain we cannot complete this Constitution in time to submit it to the people, let us then like men adjourn, and all will be right. I have always voted against these unnecessary adjournments. They have always been carried by gentlemen who have in view the leaving of this capital to go to their homes for two or three days.

Mr. T. W. DWIGHT—I only desire to protest against the remarks of the gentleman from Richmond [Mr. E. Brooks] to the effect that this Convention has made a mistake on account of the

manner in which its deliberations have been conducted. I do not believe that we have made any mistake. I think the only difficulty was that the people of the State, as well as the Legislature and this Convention, did not, at the outset, rise to a sufficient conception of the object which they had before them, and that a mistake was made by the Legislature in limiting the time in which this Convention was to submit the result of its labors and proceedings to the people. As society grows more complicated and as its interests grow more vast and varied, it becomes necessary that more time shall be taken in the discussion of these great constitutional questions. It has been well said by Mr. Francis Newman, and echoed by other thoughtful men, that as population increases in density, society in complexity and civilization in advancement, political wisdom becomes more and more necessary. Now, when we met together at the outset of these proceedings, these great topics of constitutional law were not familiar to the most of us. Although we may have studied them in times past, our thoughts more recently have been occupied with other subjects. When we came here we had to interchange views and opinions. I think that the thorough discussion to which many questions have been subjected has been a great educating process to the members of this Convention, a process which it was necessary for them to go through. And there has been no subject, in my judgment, which has been discussed here that ought not to have been examined. Many important propositions have been presented, some have been rejected, and the Constitution in those respects placed on its former basis. But before that rejection could properly take place it was necessary that there should be some discussion. Nor do I believe that it is possible to prepare a suitable Constitution for a great people like the State of New York in fragments. I believe a long time should be taken up in the examination and discussion of these various subjects, and that we should finally combine them into a well arranged and harmonious system. Therefore I do not consent that it shall go abroad to the people of this State that we have made a mistake. I believe we have done just what we ought to have done, and that if this adjournment takes place, which now is conceded by all, will at an early day become necessary, we shall have profited by these discussions, and that we shall, after a lapse of time, having thought and reflected upon these points, be in a condition to make a Constitution which will be ratified by the people, and with which we ourselves will be satisfied. I apprehend the time will come, as society in this country grows more and more civilized, that instead of being engaged for months, the wisest men will be employed for years in endeavoring to grasp the true fundamental rules which shall not cramp or hinder but promote its progress. As society grows more and more sensitive, it will be the more easily wounded, and with more difficulty protected. Let us recur, for a moment, to the great questions which we have not yet examined. This great question of city government has thus far been discussed nowhere in this country. However much men may differ as to the true

mode of disposing of it, none will deny that most important and delicate questions are presented to-day, and will grow more difficult in the rapid progress and developments of our municipalities. Where has that other great question of prison management been examined? In none of our States, as I believe, and yet I am sure that this body will not find it an easy matter to dispose of it properly. The advanced and improved theories of prison discipline areas yet entirely ignored by us, and we are to consider whether a system shall not be framed which shall admit of their introduction. Where has there been an effort made to draw the delicate line between those charities which shall receive the fostering care of the State and those which shall be left independent of State aid, or to dispose of the still more difficult question whether the State shall entirely refuse all assistance to charitable institutions? What free people so numerous as ours, has settled or even examined the mode of adjusting its public school system so as to harmonize it fully with the institutions which are the product of individual effort, or has accurately inquired whether a vast scheme of free higher education should be inaugurated? On all these and other points which might be named, the people want light—we want light. I venture to say that there is no man among us, however much attention he may have given to these subjects, who does not desire a full and candid discussion of them for the sake of classifying his own views. Can we properly take up these great questions and dispose of them in a few days? I think not. Therefore, while I do not desire to say anything on the subject of adjournment, I could not permit the remarks of the gentleman from Richmond [Mr. E. Brooks] to go out without uttering my earnest protest against them.

Mr. AXTELL—I move the previous question.

The question was put on ordering the previous question, and it was declared carried.

The ayes and noes on the resolution of Mr. E. Brooks were called for, and a sufficient number seconding the call, they were ordered.

The name of Mr. Axtell was called.

Mr. AXTELL—I desire to be excused from voting, for the reason that I am divided in my opinions on this subject. When the debate began I was in favor of an adjournment—

The PRESIDENT—The Chair will inform the gentleman that that kind of an excuse is not in order.

Mr. AXTELL—I vote aye.

The name of Mr. Folger was called.

Mr. FOLGER—Having obtained leave of absence I do not feel like voting. I therefore withdraw my request for leave of absence, and wish it expunged from the Journal. I vote no.

Mr. AXTELL—I desire to change my vote and have it recorded in the negative.

It was so recorded.

The SECRETARY proceeded with the call of the roll, and the resolution was declared adopted by the following vote:

Ayes—Messrs. Armstrong, Bergen, E. Brooks, E. P. Brooks, J. Brooks, Burrill, Cassidy, Chesbro, Church, Clinton, Cochran, Colahan, Comstock,

Corning, Ely, Ferry, Fullerton, Garvin, Gerry, Graves, Gross, Hale, Hardenburgh, Hatch, Hitchman, Houston, Hutchins, Kernan, Ketcham, Loew, Magee, Mattice, Merwin, Miller, Monell, More, Murphy, Paige, Pierrepont, Rathbun, Robertson, Rogers, Roy, A. D. Russell, L. W. Russell, Schell, Schoonmaker, Smith, Spencer, Strong, Tappen, Tilden, M. I. Townsend, S. Townsend, Tucker, Van Cott, Verplanck, Weed, Wickham. Young—60.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Axtell, Barto, Beadle, Beckwith, Bell, Bickford, E. A. Brown, Case, Champlain, Corbett, Curtis, T. W. Dwight, Endress, Flagler, Folger, Gould, Hammond, Hand, Hitchcock, Kinney, Landon, Lapham, M. H. Lawrence, Lee, Ludington, McDonald, Merritt, Opdyke, O. E. Parker, Potter, President, Reynolds, Root, Rumsey, Seaver, Stratton, Wakeman, Wales, Williams—45.

Mr. ALVORD—I move a reconsideration of the vote had, and, as a matter of course, I suppose my motion goes on the table for to-morrow.

The motion was laid on the table under the rule.

The PRESIDENT presented a communication from the Citizens' Association of the city of New York.

Which was referred to the Committee of the Whole and ordered to be printed.

Mr. FOLGER—I call for the resolution of the gentleman from Herkimer [Mr. Graves]. It is not because I am in favor of this resolution, but because I think it is a clog on the proceedings of the Convention until it is disposed of.

The SECRETARY proceeded to read the resolution, as follows:

WHEREAS, The united efforts of this Convention have failed up to this time, to complete the work which the people require them to perform; and,

WHEREAS, Some doubts have arisen whether this Convention will be able to amend and complete the Constitution in all its parts, so as to submit it to the people in time for the full and careful examination which so important an instrument demands; therefore,

Resolved, That a committee of ten be appointed from the members of this House to look over the amount of business now pending and yet to be done by this Convention and ascertain whether in their opinion the Constitution can be properly amended by due deliberation and consideration, in time to submit it to the people at the coming election, and whether in their opinion an adjournment is necessary; if so, when to be made, and to what time to adjourn, and to report to this Convention with all convenient speed.

Mr. GRAVES—I withdraw that resolution. No action having been had the resolution was withdrawn.

Mr. ALVORD—I call up the resolution of Mr. Colahan, not that I am in favor of it, but because I wish it disposed of, and I think it ought to be defeated.

The SECRETARY proceeded to read the resolution as follows;

WHEREAS, To all appearance the labors of this Convention cannot be completed, with justice to the subject under consideration, in time to submit

the same for approval by the people at the coming November election.

Resolved, That this Convention will take a recess from the first day of October next, at twelve o'clock, noon, until the first day of May, 1868, at twelve o'clock, noon.

Mr. COLAHAN—I withdraw that resolution.

No action having been had thereon, the resolution was withdrawn.

The Convention again resolved itself into Committee of the Whole on the reports of the Committees on the Finances of the State and the Canals, Mr. SMITH, of Fulton, in the chair.

The pending question was announced to be upon the amendment of Mr. Magee to the amendment of Mr. A. F. Allen.

Mr. PIERREPONT—During the twenty minutes allowed me in Committee of the Whole, I propose to address myself to the subject of taxation as now before us. This subject will be found, as it always has been, one of the most grave and delicate which can occupy the minds of this Convention. I quite agree with the earnest and eloquent gentleman from Onondaga [Mr. Alvord], who addressed this committee, that the laws as they now operate in their administration, work very unequally and very oppressively and very unjustly, and I shall join with him and with any other members of this Convention heartily in endeavoring to bring about some change in relation to this great subject. Knowledge upon it has not come by intuition, as we all well know. It requires much attention and much study, and it has always been found to be a difficult, complicated, and dangerous subject. Zeal and eloquence, however pleasant to listen to, has no place on them which requires an arithmetical calculation of statistical facts. The war which imposed upon us a heavy debt, has led many people for the first time to examine into the subject of public debt, and of public taxation, which necessarily follows. However desirous this Convention may be to hasten through it, and however desirous gentlemen may be to perfect something in relation to taxation, I am quite sure it will be found no easy matter, and will require the most deliberate consideration. If any one has kept run of the markets, they have discovered that within the last forty-eight hours wool has sold at 41 cents per pound—precisely the same wool which sold a short time ago at one dollar per pound. Hay in the market has fallen at the same rate. Gold is selling at 45 premium. Other articles that are produced in the agricultural districts, which I could name, have fallen at the same rate. I mention this to the members of this Convention, that when they come to the subject of taxation, they will find it is a difficult subject, and that the people will insist that it shall be so handled that taxation shall operate with the same equality upon all citizens. We are willing to bear almost anything, where our neighbor bears his equal burden. But when my tax is heavy and burdensome, and I know that my rich neighbor, much more wealthy than I, does not pay any proportionate increase to the government, and does not pay one-half the tax I

pay, when his fortune is five times greater, I feel dissatisfied with the government in its operation, for it imposes upon me a tax which it does not impose upon him. This war has produced changes which have not been very fully considered yet. We are hardly over the noise of the battle, and the ears of the people have hardly become quiet from the reverberations of the sound of the strife. I tell you, sir, it is not a great while, when the productions of the country are thus falling in price, before the people will begin to consider how the taxes that are imposed upon them are to be paid, and the people will begin to ask whether the rich man pays as the industrious poor man pays, who stands and labors by his side, when the rich man lives in luxury and pays comparatively no tax at all. I am presently coming to some facts on the subject, which I have taken pains to collect, and at a future time, when I will be permitted to address this committee on this subject, I propose to bring before it something in relation to this matter of taxation, drawing some deductions from these facts which I believe will convince the mind of every listening man. At present I have only time to make these few remarks. I believe most of our opinions of law, of government, of taxation, of internal revenue, of revenue by commerce and by direct taxation, come from England, and it is amazing to see with what blind fondness we cling to the old notions, which prevailed in England a hundred years ago. And when we have made some advance in political science, in the science of political economy, when we occasionally name an advance which England has made in this respect, the answer comes immediately back to us, that this will do for old England, which has become rich from accumulated wealth, but is wholly unsuited for our condition in the new country where the wages of labor are high and capital is comparatively scarce. Now, I propose to show at a future time, that this is just as unreasonable as it would be to say we would not adopt an improvement in steam engines, in shipbuilding, in a reaper, which England by her experience has found to be vastly to her advantage. I do not know of anything more surprising than this fact, which when stated will address itself to the convictions of any man, who has ever given attention to the subject, and that is, that in every instance where the subject of taxation has been up in this country, and when a law has been passed upon that subject, it has invariably discriminated in favor of idle capital against productive industry. There is no instance to the contrary, and I give by way of illustration of it the income tax of the United States. We have cheerfully paid taxes when the war was going on. We paid that income tax, but it was a tax discriminating in favor of the rich, discriminating in favor of accumulated idle capital and against productive industry. In the first place it was a tax directly in the teeth of the spirit, and the letter of the Constitution. The first article of the Constitution of the United States requires that a tax upon each State for the purpose indirectly of the federal government, shall be proportionate to the representation and to its population, yet does not every person know that this income tax has borne no

relation whatever to representation, and no relation whatever to the population of the State. But with the unconstitutionality of the law I can well get along. I am not one of those who stickle so much in the time of great commotion and great public necessity upon dwarfing the Constitution, but I have never failed to feel that this tax was made in favor of the men whose wealth had been accumulated, to the injury of the man who was engaged in productive industry. Take, for instance, a lawyer, or take a judge, or take a clerk in the bank, or take a president of an insurance company or railroad. They are living in the best ranks of society to which they are entitled to live. They are educating their children as their neighbor's children in the same rank are being educated. They are spending their income and their salary, and in the increased rate of living they are obliged to do so. When one of them loses his health or dies he leaves his children beggars. And yet he has paid on that hard earned income two months' labor of every year; while his neighbor, with the same number of children, who has greater wealth, can go to Paris or to Newport, and elsewhere, to spend his idle time and come back and lose his health or his life, leaving his family richer by so much. They are not obliged, out of that fortune to support him, for he is dead. He was, of no use to them when he lived, he was only a source of expense to the family, and the family were benefited by his death in a pecuniary point of view. Now, Mr. Chairman, I can name to you in this State of New York thirty men, whose aggregate wealth is \$450,000,000, whose individual average wealth is \$15,000,000. Now, how many men does it take from the ordinary class of well to do people in the world worth \$10,000 to equal in value these thirty. It requires forty-five thousand. Forty five thousand citizens in that condition being worth \$10,000 a piece—and they are not so numerous as may at first be supposed if we take this whole State through. I do not pretend that I have examined into the taxation relating to forty-five thousand men, but I do say I have examined into the return of taxes of a great many of these wealthy men, and of quite a number of these men who are worth \$10,000, and I do say, that according to these I have examined, I have a right to deduct and infer the condition of the others, and I say you will find these forty-five thousand men, having the same amount of fortune as the thirty men, pay between fifteen and eighteen times as much taxes. I say it is unjust and a fraud upon equal law. Now, we have here passed a tariff that did not operate for the benefit of the poor, but of the rich, and for the benefit of great combinations, always discriminating in their favor and always operating against the many. I have no time to discuss that subject at present, but any one who will look at it will see that out of all the tariffs we have passed it is the rich corporation or the rich combination or companies, that made the money. Whereas the others have been taxed for the purpose of enriching them. Now, what do we tax? What ought we to tax? Ought we not tax what a man has, and not what he has not. Now, the article that is here proposes to

tax a man on that which he has not, and I submit to this committee this is neither right nor fair. Let us test it. The proposition is here that there shall be no deductions made in consequence of the debt. Let us see how it will operate in fact. My learned friend from Onondaga [Mr. Alvord] said when he was on the floor, in his eloquent speech on this subject, so eloquently made, that a young merchant in Onondaga, who has goods, when called upon to pay his tax, says, I owe for these goods in New York. The collector goes to Pearl street, in New York, and there he is told that they owe the jobber; he then goes to the jobbers, who tell him, we owe the importer; he goes to the importers, who say, we bought these goods in England, and the price of them is still due there. Consequently the goods pay no tax. Now, suppose that to be true, I would like to ask the gentleman if goods came in here from England which are not paid for, and get out into Onondaga for sale, if Onondaga is any the less rich in consequence of their not having been paid for. Suppose they were never paid for, will Onondaga be injured in consequence?

Mr. ALVORD—I would ask the gentleman if Onondaga does not, with her police regulations and all other necessary laws, take care of and protect that property?

Mr. PIERREPONT—Yes, they protect their property, and they are doing it for the young merchant who has, on his credit, bought the goods, and who goes to Onondaga for the purpose of selling them. Now, let us test it by the actual facts which the gentleman himself has quoted. A young man has a character for integrity and industry, and good conduct. He undertakes to start in business. He goes to New York with credit, and in consequence of that high credit he can come back to Onondaga with his goods and there undertake to set up a business. But the State comes down upon him for taxes upon these goods. Why tax them until you have deducted what he owes for them? Why, my friend says, because you protect the goods. Well, does that operate equally? I live in Onondaga. I have inherited nothing. I have reached the age of manhood and my credit is such I can go to New York and buy \$50,000 worth of goods. I come back, and by dint of my knowledge sell those goods, get a fair reward, and thus begin my fortune. My friend across the way who inherits \$50,000 from his father, goes to New York and pays for his goods. He comes back. What chance have I in competition with him—what possible chance have I? If my credit itself is to be destroyed from the fact that taxation shall thus come down upon the goods, of course my credit perishes. For if I lose my life, the tax is due to the State, and the State seizes the goods to pay the taxes, and who will have the credit? It is a death blow to the entire system of credit, it is a death blow to the prosperity of every young man who starts without a capital in this country.

Mr. ALVORD—Will the gentleman permit me to interrupt him?

Mr. PIERREPONT—Yes, sir.

Mr. ALVORD—I would like to know the difference between a man who pays for his goods and the man who gets them on credit, so far as

taxes are concerned. They both pay it on the property. You give an advantage to the man with credit, because of the fact that the other man has been fortunate enough to have money to start with.

Mr. PIERREPONT—I was undertaking to say that you destroy this very credit, and thus destroy his capital. His credit cannot be sustained when such things can come down on the property he has got on credit. You destroy his credit, and thus destroy all his capital, for that is all he has. You do not destroy the other man's credit, for he has his capital.

Here the gavel fell, the twenty minutes having expired.

Mr. HUTCHINS—I have listened with much interest to the remarks of my colleague from New York [Mr. Pierrepont] but I do not understand what he would propose in the shape of taxation. If I apprehend him aright, he opposes all taxes that have been laid by the national government, in the shape of indirect taxation, viz: on incomes and on luxuries, but he proposes no substitute in their place, if they are to be discontinued. Now it does seem to me that if we are in the condition represented by the report which the Committee on Finances, or rather the majority of the committee has made, it is the duty of this Convention to see to it that every legitimate and fair source of revenue is resorted to, that our credit may be sustained, and the burdens imposed upon the people may be equally and impartially borne. I must say, Mr. Chairman, that when I listened to the reading of the report of the committee by the chairman, I was taken back, some four or five years, and seemed to be listening to a speech of one of those who, in the dark hours of our national history, sympathized rather with the rebel cause than with the loyal men of the nation. I thought that I discovered in the report an animus and spirit not justified by the facts of the case. No one, a stranger to the policy of our State, would dream that the eloquent chairman of the committee intended to save the money of the people of this State by refusing appropriations for the completion of the canals. No, sir, it was a report intended to magnify the indebtedness of our country, and the burdens in the shape of taxation imposed upon the people, and that document, under the sanction of the committee, was to go forth as the report of the Finance Committee, exhibiting the financial condition of the State, and as I think, was intended to be used for political purposes in the approaching canvass. Mr. Chairman, am I correct in this statement? I see published in some of the democratic daily papers a statement headed "\$180,000,000 of taxes a year; the result of radical misrule." Then follow extracts from the report of the majority of the Finance Committee, and to those extracts are appended the names of all the members of the Finance Committee. You know, Mr. Chairman, and the members of this Convention know, and the people of this State should know, that this report was not signed by four gentlemen whose names are appended to the extracts to which I have referred. The reported article was concurred in by the committee (fifteen in number), with a single reservation; the report of the com-

mittee was concurred in by some members whose names are appended to it. Then I find annexed to the report the following language:

"I approve of the article reported, except the provision suspending the rebuilding of the Capitol."

(Signed) ERASTUS CORNING."

Then comes the following statement:

"We concur in the article reported by the committee, with a single reservation. It deals with the canals on the assumption that their present capacity is adequate and that their enlargement will not be necessary for many years, if ever. Of the correctness of that assumption we entertain a doubt. If the facts, as they are now in course of full and authentic ascertainment under a resolution of the Convention, shall not justify the assumption on which the reported article is based we shall desire its modification to meet any ascertained necessity, near or more remote, for the enlargement of the canals."

"JOSHUA M. VAN COTT,

"AUGUSTUS FRANK,

"B. P. CARPENTER,

"A. F. ALLEN."

"Albany, August 7, 1867."

These gentlemen never signed the report, never, as I understand, concurred in that report. Now, why this misstatement? Why this appending their names to extracts from a report which they never concurred in? Why this deliberate falsification of the facts? I ask the authors thereof to answer these questions—to justify the grave responsibility which they have taken upon themselves in thus perverting the report of the committee. Let us for a few moments consider the report of the committee, or, I may be permitted to say, the report of the chairman of the committee. He asserts that this State is indebted in the sum of \$633,361,682.22, that is, that its property is mortgaged to that amount, and that the annual taxation of the State at the present time is \$180,981,398.80. Now, this statement cannot be true. Direct taxation to that extent could not be borne by the people. What is the fact, and what would a true statement of the State finances show? I admit that our obligations are large, and that the burdens imposed upon the people of the this State, and upon the people of the United States, are grievous. But I would ask in this connection, who are responsible for these debts and how were they incurred? Will the Chairman of the Finance Committee maintain that the money which has been expended in the creation of that debt, was unjustly and unfairly expended? I do not understand him to say so. Who are responsible for it? Who but they who were engaged in this rebellion, they who were its authors and abettors, and who have continued its sympathizers from the day of its outbreak until the present time? Therefore, if our burdens are grievous, and if they are to be borne, let those who were the cause of it, take the responsibility, and not attempt to shuffle it off upon those who happened to be in power at a time when wicked men attempted to overthrow our government. Will any one aver that we have sustained free government and the integrity of the union at too high a price? Our government remains intact. The rebellion has

been put down, and we stand to-day higher in the estimation of all nations than we ever did before. Our credit throughout the length and breadth of the globe was never better, than it is now, and I therefore challenge any one to say that under these circumstances he thinks we have paid too dear for our great success. But, Mr. Chairman, in what manner is this large sum of \$180,000,000 of taxation annually made up? The report of the committee avers that the national government raises by indirect taxation from the people of this State annually, the following amounts, viz: from internal revenue \$62,181,398.81, and under the tariff \$56,000,000, to which is added.

Direct taxation by the State,.....	\$12,800,090
Direct taxation by counties and towns	32,000,000
Direct taxation by cities and villages, (estimated),.....	18,000,000
	\$62,800,000

making an aggregate of annual taxation of \$180,981,398.80, more than eleven per cent of the assessed valuation of the property of the people of this State, and that, if this excessive taxation should be capitalized, it would require the sum of \$3,000,000,000, at six per cent to pay it, which is \$1,400,000,000 more than the assessed value of the whole property of the State. It is then averred that if the present amount of taxation is to be regarded as *permanent*, and cannot be materially reduced, the unwelcome truth must be acknowledged, that the property of the State is mortgaged more than the amount of its full value. No one pretends that the full value of the real and personal property of the people of this State is less than five thousand millions of dollars, and it is above that figure rather than under it. The chairman of the committee, in his previous statement, had referred to the *assessed* value of the real and personal property of the State; but he erred when he penned these words: "The unwelcome truth must be acknowledged, that the property of the State is mortgaged to more than the amount of its full value."

Mr. CHURCH—Will the gentleman allow me? The gentleman will see that that statement is based entirely upon the assumption that the annual taxation there stated is permanent, and that to capitalize that amount of taxation will require property of the value of three thousand millions of dollars, which is fourteen hundred millions of dollars more than the assessed value.

Mr. HUTCHINS—But the statement in the report is that the property of the State is mortgaged to more than the amount of its full value—not to more than the amount of its assessed value—and it is of this that I complain. My friend will not deny that the real and personal property of the people of this State to day is worth more than five thousand millions of dollars. We will now consider the other statement contained in the report, that the outstanding debts of the State, its cities, counties, etc., amount to \$133,351,682.22, and that the proportion of national debt belonging to this State to pay, is not less than \$500,000,000, making a total indebtedness of \$633,351,682.22. Is this statement correct? What I claim is that the property of this State is

liable for the amount of the State debt, and the debts of the counties, towns, and villages, and its proportion of the national debt, and when you have ascertained the amount, you have the sum that the people of this State are liable for, and to pay which its property and industry are pledged. You have the amount upon which we are called upon to pay interest. Let us see how much that amount is. We will take the statement of the gentleman that the debts of this State amount to \$48,351,682, and those of cities, villages, counties and towns to the additional sum of \$85,000,000, making a total State indebtedness of \$133,351,682. What amount should be added for the national indebtedness for which we are liable? The gentleman says one-fifth. Why one-fifth? We have this fact staring us in the face, that we have only one-ninth of the population of the United States, and one-tenth of the assessed value of the real and personal property of the whole country. I claim, instead of one-fifth being added as the proportion of our national debt, it should be one-tenth; and in place of \$500,000,000 we should have \$250,000,000, which, added to the State indebtedness, makes \$383,000,000, instead of \$633,000,000, in round numbers, for which the property of our State is pledged. But from this sum should be deducted \$35,000,000, the value of the canals over and above all liens upon them, which will reduce the indebtedness in round numbers to \$348,000,000, the interest upon which at six per cent would amount to less than \$21,000,000. And this is the amount that the State is actually called upon to raise annually to pay the interest upon its State debt and its share of the national indebtedness, and that this is all that we are required to pay, except such sums as are demanded for the current expenses of the government, State and national.

Mr. RATHBUN—Will the gentleman allow me to ask him a question? I want to know why we should not be entitled to a part of the revenue derived from the sale of the public lands?

Mr. HUTCHINS—Certainly, any sum derived from this source would be applied to lessen the amount of our national indebtedness. The expenditures for the support of the government, State and national, should be lessened if possible; we are all agreed upon that point. But when the proposal is that our taxes shall be reduced by the small sum of three or four millions a year, when we are burdened, as it is alleged, with a taxation of \$180,000,000 annually, by refusing appropriations to aid in the construction of railroads, amounting perhaps to half a million of dollars a year, and which are made for the purpose of developing the resources of the State, and prohibiting aid to orphan asylums, which it is the duty of the State to sustain, especially at this time, when so many of the children of our soldiers are orphaned, and depending upon charity for their sustenance and support; when it is proposed that we should reduce our taxation by these means, in the small amount I have mentioned, I would suggest to my friend from Orleans [Mr. Church] that a more effective mode to reduce taxation may be found in hurrying on the work of reconstruction, so that the government may not be

compelled to continue in its service a large army to enforce obedience to the Constitution and laws in the States lately in rebellion. The reconstruction of the States being effected, our standing army may be reduced in numbers to that point, that the people of this State may be relieved from taxation to the amount of thirty or forty millions annually. The relief from taxation which is proposed by the committee, is but as a drop in the bucket, no more than the weight of a fly on the horn of an ox.

Here the gavel fell, the gentleman's time having expired.

Mr. BELL—I ask unanimous consent that the gentleman from New York [Mr. Hutchins] may be allowed to close his argument.

Mr. E. BROOKS—I hope it will be granted, and that the same privilege will be given to the gentleman on my right [Mr. Church].

Mr. WEED—I object.

Mr. HUTCHINS—I move to strike out the first section of the minority report, which is before the committee for their consideration.

The CHAIRMAN—The Chair would inform the gentleman that there being two amendments pending, the motion is not now in order.

Mr. BELL—I understand there is no objection to the gentleman proceeding.

The CHAIRMAN—The Chair heard objection.

Mr. WEED—I did object, simply because the discussion had nothing to do with the pending question. The question is upon the motion of the gentleman from Chautauque [Mr. A. F. Allen], in reference to taxation; and the gentleman is making a political speech.

Mr. GERRY—I hope the gentleman will withdraw his objection. I would like the gentleman from New York to proceed. He and I differ politically, and on many subjects, but I hope he will be permitted to proceed.

Mr. WEED—I believe that the remarks of the gentleman are entirely out of order, and for that reason, being one of the minority here who are accused of delaying business, I propose to object.

Mr. A. F. ALLEN—I offer this as a substitute for the amendment previously offered.

The CHAIRMAN—There is an amendment to the amendment of the gentleman [Mr. A. F. Allen] pending, so that this amendment will not be in order, and cannot be received unless by consent.

No objection being made, Mr. A. F. Allen offered the following section:

The Legislature at the first session thereof after the adoption of this Constitution shall provide by law for a uniform rate of assessment and taxation upon all property within this State and not in transit, including all debts, whether such property or debts be due by or due to residents or non-residents of this State, against the person in the possession having the control thereof, without any deduction from the value thereof for any debts due or to become due from such persons, and for requiring from every person within this State, a sworn statement of the cash value of all taxable property or debts in the possession or under the control of such persons.

The Legislature shall not hereafter exempt any property or class of property from taxation, ex-

cept such as is now expressly exempted by the statutes of this State.

Mr. HUTCHINS—That substitute having been accepted, I believe I am in order in proceeding to address the committee upon it.

The CHAIRMAN—The gentleman will proceed.

Mr. HUTCHINS—The gentleman from Clinton [Mr. Weed] complained that I was speaking out of order. I think he mistakes the position that this committee is in. We are now considering the financial report, and I am criticising that report. That is the subject before this committee, and if I seem out of order, the reason is that that report contained matters which were out of order, and should never have been brought before this committee; but if they were not out of order I am in order in answering them to the extent of my ability. When my time expired I had stated that our indebtedness, State and national, amounted to about \$350,000,000 a year in place of \$633,000,000, as claimed by the majority of the Finance Committee, and that all sums that were raised by taxation, over and above the amount to be paid for interest on that sum, was so much raised for the support of the government, and that it was our duty to see to it that our expenditures for the support of the government were as light as possible; that wherever reduction could be made it should be, in order that the burdens upon the people might be lessened. Now, following this statement of our indebtedness, State and national, which is fixed at the sum of \$633,000,000, I find this remarkable language in the report under consideration: "Saying nothing of the unascertained national indebtedness which high authority has placed at the same amount"—a statement, in effect, that the national indebtedness amounts to \$5,000,000,000 instead of \$2,500,000,000, which is the entire amount of national debt, according to the official statement of the Secretary of the Treasury by his last monthly report. Whence comes this indebtedness? Of what items does it consist? The chairman of the Finance Committee tells us that it exists; if so, he is bound when called upon to give us light on the subject, to inform us of the nature of the claim. I have seen it stated, and I believe that a portion of this indebtedness—this unascertained national indebtedness, to which the gentleman refers, consists of claims that are to be made upon the government by those who have been in rebellion for compensation for the loss of their slaves. I believe that is good democratic doctrine in the states of Kentucky, Delaware and Maryland, and I have no doubt that if that party ever obtains power again (which I do not believe will be the case), a claim will be made for compensation for slaves to the extent of some \$2,000,000,000, to go into the pockets of rebels, who have been for years fighting the government. There are also other claims in the shape of compensation for property destroyed in the South during the rebellion, and they, too, I suppose, will form a part of this "unascertained indebtedness." That indebtedness must consist of such claims, because the actual, legitimate, ascertained indebtedness of the United States to-day does not exceed \$2,500,000,000, and I should like to know

where this indebtedness is to come from, if not from these sources.

Mr. CHURCH—Will the gentleman allow me to refer to my authority?

Mr. HUTCHINS—I do not care who the gentleman's authority is. I want him to inform us what are the items which go to make up the alleged indebtedness. For this purpose I will give way to the gentleman. The gentleman has made that assertion, and I challenge him to state what that indebtedness consists of. The report of the committee further avers that the annual taxation is much larger than even the permanent debt would indicate, and that the direct annual taxation of the State is \$12,800,000; that of counties and towns is \$32,000,000; and that of cities and villages estimated at \$18,000,000, making a total of \$62,800,000. Now, sir, recollect that this is fixed upon as a sum that is to be permanent. How much of this alleged annual taxation of \$62,800,000 was paid upon the principal of our debt? I venture the assertion that at least one-third of that amount was applied in that way, at least one-quarter of the direct taxation of the State was for that purpose; and from my knowledge of the rapidity with which, counties and towns have been paying off their indebtedness for the last three years, I believe that at least a third of their local taxation was for that purpose. Yet, with these facts well known to the gentleman from Orleans [Mr. Church], he would have, the people of this State believe, that taxes to an equally large sum are to be permanent. The whole amount received by the United States government from internal revenue, and collected by the tariff for the fiscal year, ending July 1st, 1866, was \$510,906,984. How much of this sum of \$510,000,000 raised by the government was applied toward the liquidation of our debt? On the 31st of August 1865, the national debt was \$2,757,803,686. On the 1st of November 1866, it was \$2,551,424,121, showing a reduction of \$206,379,565, and on the 1st of August, 1867, it was \$2,511,306,436; showing a total reduction of \$246,497,250 in less than two years. And during those two years, we paid off besides, an immense amount of floating debt. Would the democratic party have done better. Mr. Chairman?

Mr. M. I. TOWNSEND—I ask the gentleman to allow me to call his attention to the fact, that the Secretary of the Treasury, has corrected that last report, showing the national debt now to be but \$2,492,000,000.

Mr. HUTCHINS—That was on the 1st of September. I am speaking of the 1st of August. Of the \$62,182,000, claimed in the report to have been paid by the people of this State for internal revenue for the fiscal year ending July 1st 1866, more than one quarter was applied in liquidation of the debt. Twenty-six millions being the amount paid by the people of this State, was thus applied, and yet in view of this fact it is claimed or intimated in the report, that this enormous sum of \$180,000,000 of annual taxation, should be capitalized, and that it would require the sum of \$3,000,000,000 at six per cent to pay it. Why, the gentleman's logic is this. I owe a mortgage upon my farm of ten thousand dollars. I am paying six per cent on it, six hundred dollars a

year. I pay off an amount of the principal in one year, twelve hundred dollars, making a total amount paid that year of eighteen hundred dollars, and leaving still to pay eight thousand and eight hundred dollars. Now, what does the gentleman in effect aver? It is this. That because I have paid eighteen hundred dollars in one year, for principal and interest, that therefore I have a mortgage upon my farm for thirty thousand dollars, because it would take the sum of thirty thousand dollars at six per cent, to produce the eighteen hundred dollars which I have paid. I supposed that I had diminished my indebtedness in the sum of twelve hundred dollars, but I find by the gentleman's logic, that I have really increased it twenty thousand dollars. That is what the gentleman's logic amounts to. Now, a word as to these indirect taxes. How are they collected? I do not agree with the remarks of the gentleman from New York [Mr. Pierrepont], that the system is unjust. It is impossible to frame any system of taxation that will be wholly just. But the mode of taxation should, of course, be as nearly equal as possible. I think, however, that Congress has shown great wisdom in its financial policy, for it carried us successfully through the war, and brought us out triumphantly, and stands to-day unimpeached and unsuccessfully assailed. Of the whole amount received from the internal revenue by the United States for the year 1866, it is claimed that the people of this State paid \$62,181,398,80. If this be so, but a small portion of it was paid by persons of moderate means, except it was paid for liquors, tobacco, cigars, etc. The amount raised in this State for that year from incomes only, was nearly nineteen millions of dollars. The incomes in this State last year must have amounted to between four and five hundred millions of dollars. About one-third of this sum alone would have paid the entire alleged taxation of the people of this State for that year, and this, too, from incomes over one thousand dollars. Government does not go into the households of the poor men, the mechanics, the laborers of the State, to collect this tax. But by far the greater portion is paid by the rich, who are none the poorer for paying it. The amount that was collected from sales of tobacco, cigars and liquors was nearly twelve millions of dollars. Suppose that those who pay the tax upon those articles should conclude to give up the use of them. It would not hurt anybody. They would not be any the worse off, and perhaps it would be better for many of them to do so. In regard to the amount collected by the tariff, which, it is averred, was nearly two hundred millions of dollars last year, and of which the people of this State, it is claimed, must have paid one-fifth, which would give about forty millions in gold. Now it is well known that the amount collected from the tariff is derived from the entire population of the country, and in my judgment it would be fair to assume that the amount paid by the people of this State, is in the proportion that the population of this State bears to that of the whole country. This would make the amount paid by us for 1866 about \$30,000,000 instead of \$66,000,000, as is claimed in the report

of the committee—a deduction of nearly one-half. I admit that New York may pay more than other States for articles that are subject to these tariff duties. It may be, that in the city of New York, or other large cities of this State, the people are a little more extravagant in the use of luxuries than they are in the Western and Southern States, but for myself, I do not believe it. I believe that a fair view of this matter would place the proportion of New York at about one-ninth, thus making the amount paid by the people of this State some thirty millions of dollars, as I have just stated. I would not do the gentleman from Orleans [Mr. Church] injustice. I believe that he intended to make a fair report. I will not say of his report what he said of the report of the Committee on Canals, to which I had the privilege to append my name, namely, that the adoption of it would be a disgrace to this Convention and to the people of this State. I will not say that his report is disgraceful, or a disgrace to the people of this State. After sober reflection, and when he came to reply to the argument of the gentleman from Ontario [Mr. Lapham], he warned the Convention not to adopt this “disgraceful” report. I recollect a report made in 1859, when Comptroller of this State, he used the same word “disgrace.” It is a favorite word with the gentleman. He at that time thought that the policy which had been continued in relation to the canals was a “disgrace to the State.” I suppose, too, that when he voted against the constitutional amendment of 1854, he thought that the adoption of that amendment by the people was a “disgrace” to the State.

Mr. CHURCH—I voted for it.

Mr. HUTCHINS—If the gentleman voted for it I would like to know why he is now so strenuous to prevent any further improvement of the canals? for, if the improvement of the canals provided for by that amendment was demanded, why not now provide in your Constitution for other improvements which the growing wants and necessities of commerce may demand in the future? During the last year that the gentleman was Comptroller there was received from canal revenues \$1,700,000. The next year he was succeeded by a republican, Mr. Dennison, and the revenues went up to over three millions of dollars. Was that because he, as a democrat, could not collect as much as his successor, a republican, could collect? I do not say so, but I might say it with just as much justice as he can claim that his figures truly represent the national indebtedness and annual taxation.

Here the gavel fell, the gentleman's time having expired.

Mr. YOUNG—I move that the gentleman have unanimous consent to address us for one hour more. I am perfectly delighted with his attacks on my party.

Mr. GERRY—I unite with the gentleman in his motion.

No objection being made, Mr. Hutchins proceeded.

Mr. HUTCHINS—I was about, Mr. Chairman, to conclude the remarks that I felt called upon to make to the committee, and I was saying that I

might claim that the great increase in the canal tolls after the gentleman ceased to be Comptroller was owing to the fact that he was succeeded by a republican; that I might make that claim with just as much justice as the gentleman may claim that the aggregate *permanent* annual amount of taxation to be imposed upon the people of the State of New York for State and national indebtedness and current expenditures is one hundred and eighty millions of dollars. Now, I shall unite with the gentleman in any system which he may propose to relieve the people of this State from taxation. The past is gone. The expenditure has been made. If that expenditure was wrongly incurred, if the money was wasted, if he can put his finger upon any one item of the national indebtedness which ought not to exist, I desire him to do so. If he can point out in what way the system of taxation can be improved by the national government and the burdens of the people lessened, I entreat him to do so. I shall, also, Mr. Chairman, most cheerfully unite with him in perfecting our own system of State taxation, so that our burdens may be borne equally by all the people of the State. But the gentleman has not taken that course. He attempts to magnify our taxation to an amount which does not exist, except in his own imagination. And he does this, in my opinion, not for the purpose of enlightening the people of the State in relation to their financial condition, but for the same purpose for which the extracts from the report to which I have referred are now being used through the democratic portion of the press of the State—that the people may become alarmed and be made to believe that a condition of affairs prevails which has no existence, and appending thereto the names of all the gentlemen composing the Finance Committee.

Mr. TILDEN—I should like to ask the gentleman whether there is any such publication as he speaks of purporting to be signed by the Finance Committee.

Mr. HUTCHINS—I have it in my hand, sir, copied from the New York World, and the names of all the committee are appended.

Mr. TILDEN—I would like to look at it. We have none of us, so far as I know, signed any such thing.

Mr. HUTCHINS—The gentleman can see it.

Mr. E. BROOKS—Will the gentleman allow me to state that there is no such thing in the official report now under consideration?

Mr. HUTCHINS—No; and if the official document could go to the one hundred thousand homes of this State in which the newspaper statements go, I should not object. But where one copy of your report goes, a hundred thousand copies, I may add, of these newspapers go, to poison the minds of the people and mislead them in regard to these great questions. Now, in relation to the taxes which are to be levied in the future. I see no reason why we ought not to come back to the position of things previous to the war. The amount collected previous to the war from your tariff and from the sale of your public lands supported your government. There was no internal revenue tax of any description. Why not come back to that state of things, when the revenues derived from

your tariff and the sale of your lands will again support your government? There is but one obstacle in the way, and that obstacle is the reconstruction of our Union which is so long postponed. The reconstruction of the Union and the consequent disbandment of our large standing army will at once reduce our expenses so much, that our revenue taxes may be lessened at least two-thirds at once, and your tariff one-half, and within fifteen years you can extinguish your entire indebtedness and come back to the state of things that existed previous to 1861. But if this policy of obstruction is to succeed; if fair and liberal propositions on the part of those in the majority be not accepted by the minority or by the President of the United States, I know of no other way but that we must go on as we are. We must protect and defend the government. We must not lose the fruits of the war. The people of this country demand that this Union which has been sustained by the blood of so many soldiers, by so many sacrifices, and by the expenditure of so much treasure, shall be perpetual, and if the chairman of the Finance Committee or other gentleman acting under him will only act with us in this Convention, laying aside as we have endeavored to do, all party issues, all party desires and aspirations, and will meet us in a frank and honest spirit, I believe, sir, that we can work out a system which will accomplish the great objects I have just named. I am sorry, Mr. Chairman, for trespassing so long upon the time of the Convention, and had it not been for the remarks that have constantly fallen from gentlemen here, and which so far have gone unanswered, and these statements untrue in fact and in inference which have been made in the papers, and insinuations which have been constantly, from day to day thrown out here in order to mislead the people, I should not have deemed it my duty to make these remarks. I trust, sir, that this will not be continued, but that for the future, during the session of this Convention, any statement which is made in relation to the indebtedness of our State or Union, and in relation to its taxation, or its financial affairs, will be such as truth will warrant.

Mr. NELSON—I would like to ask the gentleman under what circumstances he would consent to a reduction of the present tariff, one-half. He speaks of reducing it one-half. Now under, what circumstances would he consent to that reduction?

Mr. HUTCHINS—I would consent to reduce it one-half whenever we could raise a sum sufficient to pay the interest of our debt and a small sinking fund to pay it off entirely and pay the expenses of the government economically administered.

Mr. NELSON—One question further. The gentleman would insist, then, on no tariff for protection but be satisfied with one which merely accomplished the ends which he has stated, a tariff which paid the interest on the public debt and furnished a reasonable amount for a sinking fund.

Mr. HUTCHINS—I should say that was a question which can be answered in twelve or fifteen years from this time, better than it can now. It

is a sort of suppositious case, because we know we must have a tariff for revenue for years to come.

Mr. TILDEN—One of my republican friends [Mr. M. I. Townsend], who addressed the Convention this morning, commended the entire abstinence from all political action or political discussion which had characterized—as he said with truth and justice—the conduct of the democratic members upon this floor, and all of those gentlemen who participated in the debate this morning yielded freely to the democratic portion of this Convention the acknowledgment—which is properly and entirely their due—that, from the beginning of our proceedings and all through them—we have done everything in our power to promote the business for which this Convention assembled; and that, while conceding to the majority here all the rights a majority may be entitled to in such a body, we remembered always that we were citizens of this great State, citizens whose lot was cast with the lot of those who are fortunate enough to have the control of this body, and that it was our duty as well as their duty to see that the trust reposed in us by the people should be carried out in the best manner possible. Sir, these admissions, these voluntary declarations, did us no more than justice, and they did honor to the candor of the gentleman who made them as much as they inured to the credit of those who were their objects. But, sir, the honorable member from New York [Mr. Hutchins], who has just taken his seat, seems to have misapprehended the tenor of those remarks, and to have thought that they were reproaches addressed to this Convention; because, instead of rising to the height of the great duty for which it has been commissioned by the people, it had not degraded itself into an arena for the petty contests and petty diatribes of village politicians. And the gentleman seems to have undertaken to supply that deficiency himself—evidently in the fixed resolution that this body should no longer be liable to such a reproach. I must, however, do him the justice to say that in the close of his speech he delivered an impressive warning to us all, on both sides, that nobody should imitate his example; and that he should be left—as I trust he will be left—in the complete and solitary monopoly of the style and topics of debate in which he has to-day indulged upon this floor—so unfit for this place and occasion, so unworthy of him, and so calculated to degrade us all. Sir, the gentleman has not been content with merely impugning the accuracy of the calculations made by the honorable chairman of the Committee on Finances as to the scale of taxation in this country. That would have been a fair and legitimate mode of discussion. I have not, myself, examined those calculations. It so happened that I was not able to be present with the committee during their deliberation upon, or at the time of their adoption of the report, and I have had no occasion or opportunity to verify these calculations. I think, however, speaking generally and from recollection, that they do not present a darker picture of our condition in respect to taxation than that presented by my honorable friend from New York [Mr. Opdyke], a distinguished writer on the subject of political economy who has made taxa-

tion his special study, and who, the other night, presented the results of his reflections upon that subject. I think, sir, that the picture drawn by him of our condition is quite as dark and gloomy as the picture drawn by my honorable friend the chairman of the Committee on Finance. The member from New York [Mr. Hutchins], or, rather, the member from the State at large residing in New York, has brought here a newspaper paragraph containing an alleged extract from the report of the Committee on Finance, to which is added what I must presume is intended to be merely a list of the members of the Finance Committee, for I find my own name there, although I neither signed the report nor knew of the existence of this paper, until the gentleman from New York brought it here to-day. One other topic deserves a passing notice, and then I have done. The honorable member from the State at large residing in New York [laughter] has thought it fit, thought it becoming, thought it decent to describe members of the Finance Committee, if I understood him correctly, as men sympathizing with the rebellion. Sir, I desire to know of that honorable gentleman—as myself a member of that committee—whether he applies any such language to me?

A MEMBER—He is gone.

Mr. TILDEN—Sir, I am sorry that the honorable member is not here to answer. I pass from this aspersion simply saying of it that, so far as he may have intended to apply it either individually—or generally, so that I come within the scope of its application—it is an entire falsehood, and calumny—in all its degrees and in all its parts. Sir, at the beginning of the rebellion, called on by distinguished men to take some part in the public measures in the city of New York relating to that subject, I answered that I would give to the public agents—although elected by the opposite party, although I was unable to influence their policy—a support as full, as fair, as candid and as liberal as I would have given to Andrew Jackson if he had been in the presidential chair in place of Mr. Lincoln—and during the entire war I never deviated from that position. I did often disagree widely with the policy which characterized the administration during the war—sometimes on military questions, sometimes in regard to civil affairs, and the objects which the war should be prosecuted to attain—and generally on the subject of finance. On that subject, I agree with my distinguished friend from New York [Mr. Opdyke]. I agree, I believe, with every well educated political economist in the country. We all thought that it was unnecessary and unwise to introduce—to the extent to which it was introduced—this paper money system which is to be the curse of this—and perhaps of generations that will come after us. I do not mean to say, Mr. Chairman, that this system, with all its evils, was not and is not an infinitely less evil than it would have been to have submitted to the dismemberment of our country. I have no doubt upon that subject. I have no doubt that every other object except civil liberty, under constitutional government, was inferior to the object of maintaining the unity, the power, and the renown

of this great country. But, sir, on the subject of finance, I was of the opinion, with such men as Mr. Gallatin, as well as my friend Mr. Opdyke, that the system adopted was not a necessary, or a wise or a proper one. When it was adopted, however, by those who had and have the lead in the affairs of the country, and the control of the government against my counsels, communicated wherever they seemed possible to be useful—like a good citizen, I endeavored to make the best of it, and even abstained from urging objections to it in public discussions—when it was apparent that it would be adopted, and that an exposition of its true character would only tend to hasten the catastrophe which was inherent in the nature of the system, and to the fatal brink of which, as the Secretary of the Treasury afterward avowed, we nearly approached. Sir, I know that it is quite common among small and narrow partisans to make such expressions as the member has thought fit to indulge in with reference to the democratic party. In regard to almost that entire party, with a few exceptions—eccentricities which happen in all large parties—I believe it to be as utter and complete a calumny as it is in its application to myself. What is to be gained at this day by the revival of these stale and exploded political falsehoods? At what end do they aim? What good purpose do they serve? The honorable gentleman from Rensselaer [Mr. M. I. Townsend], to whom I have already alluded, might have added to the grounds upon which he commended the democracy, so far as represented on this floor, that hitherto they have on frequent occasions forbore to repel aspersions of this character, as false and as calumnious as that to which I am now replying; that they have submitted to them without making any reply, in the hope that this body might not degenerate into a partisan club, and leave its deliberations for the discussion of party topics or the renewal of party controversies—to be revived not with advantage or in honor to anybody here, and entirely inconsistent with and unworthy of the grand and important public objects for which this body is convened. Sir, I hope, therefore, that none of us will have hereafter any further occasion during our session to discuss or refer to such subjects. I have, however, deemed what I have said to-day to be indispensably called for by the insolent tone assumed by the gentleman in respect to us who will not consent to be here or to participate in the discussions of this body except as equals and as gentlemen entitled to gentlemanly treatment from all other gentlemen upon this floor.

Mr. CHURCH—I intended, previous to this time, to have explained, in behalf of the Finance Committee, the reasons why that committee has not presented any report upon the subject of taxation, which was referred specifically to them. The Committee on Finance have not been neglectful of their duty in that respect. They have had several meetings to consider that question. But, sir, after the fullest discussion and consultation they were unable to agree upon a plan to be submitted to the Convention. The majority of that committee signed a report—I am not sure whether it has been presented or not—declaring that it was inexpedient to take any action upon that sub-

ject, and then it was that the gentleman from Chautauqua [Mr. A. F. Allen] asked permission to present the report as a minority report, which is now under consideration. Now, sir, I confess that I was exceedingly surprised at the speech of the gentleman from New York [Mr. Hutchins] this morning. It has been determined, as I understand, to proceed with the labors of this Convention. It has been determined that we shall go on holding these extraordinary sessions every day, three of them, and the intimation has been given that we shall remain to finish the work for which we are here convened. Yet, sir, on the heels of the announcement of that determination we have had a political stump speech made, occupying nearly an hour—a speech that has no relevancy to the question under consideration—a speech intended for the political campaign into which we are about entering, and a speech which I do not hesitate to declare is a disgrace to the gentleman who made it and derogatory to the character of this Convention. Sir, for three long months I have occupied a seat in this Convention, and never have I labored more severely or more hours than I have since I have been a member of this body. And I have labored with the single purpose of presenting to the people of this State a Constitution which would be acceptable to them. I did not believe, in the outset, that this was a desirable time to hold a Constitutional Convention. The public mind was too much unsettled and the circumstances were too unfavorable in many respects to make a Constitution with the deliberation and calmness which I believe to be necessary for that purpose. But after the people decided to hold a Convention, after I had the honor to be elected a member of it, and after I took the oath to perform the duties faithfully, I feel in my heart and conscience that I have discharged my duty honestly and faithfully. And now, sir, I could but feel indignant when a gentleman of this Convention [Mr. Hutchins] rose in his place and charged that the report of a committee of which I have the honor to be the chairman and a member, was made to this house for political and unworthy motives. We have been two weeks engaged in the discussion of this report, and yet no gentleman of this Convention has attempted to make any such charge against the committee, or against their report, until this morning, when we are about closing our consideration of this article. And for what? I ask gentlemen who boast of being in the majority in this Convention, for what has the gentleman from New York denounced the report of the Finance Committee on this occasion? For what purpose is it? Is it for any purpose connected with our proceedings, with any question before this body? No, sir! No, sir! It is for the miserable, pitiful, disgraceful object of seeking some political advantage from it, and nothing else; and I charge the gentleman with it. Now, sir, the gentleman has talked about some publication in the papers being a forgery, because the names of all the members of the committee were attached to the newspaper paragraph connected with this report, while four of the committee made a reservation on a single point. I know nothing of the paragraph in question. I

have not seen it. The report presents the names of the minority of the committee in the precise attitude which they chose to occupy for themselves, and there is no occasion or ground for a charge against the committee, or the chairman of that committee. The gentleman said, as I understand, while I was absent (for I was not here when he commenced his remarks), that the report sounded like a political speech which he had heard during the rebellion by those who opposed the war and aided and assisted those who were engaged in the rebellion. I do not know whether these remarks were applied to me or were made in such a way that they could be taken to apply to me; but I take occasion to say that, so far as the support of the government was concerned in furnishing men and means, from the time this rebellion broke out to the surrender of the army of General Lee, no man, in the limited capacity in which I could act, rendered more service to the government than I did. And, though I say it myself, I do not believe there is a man in this State who, by his own personal exertions upon the stump and otherwise, recruited as many men for the war as I did—a remark which I should not have made and would not have made with reference to myself but for the insinuation contained in the remarks of the gentleman from New York [Mr. Hutchins]. I claim no credit for it; I believed it to be my duty under the pledge that when the war was over the rights of the States should remain unimpaired. And, while I differed with the administration on many points, while I felt on many occasions that they were committing serious errors, yet never was there a call for men but that, to the extent of my ability and my influence, I aided in procuring them. Can the gentleman from New York [Mr. Hutchins] say as much? That gentleman is a full-grown, able-bodied man, but I never heard that he went to the war—I never heard that he was ever engaged in battle, except these frequent battles against the public treasury, in which he is reported to be a valiant and successful soldier. The gentleman in speaking of the debt asks reproachfully whether we have paid too much. Sir, to restore this Union, to reinvigorate the Constitution of our fathers, to make this again a free country, I answer that we have not paid too much. But, sir, to make a consolidated empire, to make a consolidated despotism, to hold one-third of this country under military government, to subvert the Constitution of the United States, we have paid too much. The gentleman says that there is only one obstacle in the way of reducing our expenses and coming down to the old standard of supporting the general government, and that is the reconstruction of the Union. And, sir, what is that obstacle? That obstacle is the majority in Congress, which from the first day of the surrender of the rebel armies has stood in the way of the reconstruction of the Union. That is my opinion, and history will record it as the opinion of posterity—that these men, under the pretense of restoring the Union, have kept it asunder for nearly three long years since the rebellion was crushed and the war over. "Shall we lose the fruits of victory?" says the gentleman from New York. And who are "we?" Is it the political

party to which he belongs? And is the victory for the benefit of that political party? Are the liberties of the people of this country and the principles of the Constitution to be sacrificed for the benefit of a political party? And are we to turn this Convention into a political meeting for the purpose of discussing these questions at this late day? Or, does the gentleman suppose that he can make these attacks upon the derided minority and they not show a proper resentment? If he does he is mightily mistaken. Now, sir, I have not said one political word since I have been in this Convention, until this morning. I have not thought a political thought, and I challenge any gentleman to point to anything I have done or a word that I have said of a partisan character.

Mr. HAND—I think I heard the gentleman say that "we had heard from California" the other day.

Mr. CHURCH—Yes, I did say that we had heard from California in a good natured way; and I immediately apologized for it, saying that I had been reminded of it by my friend Mr. Brooks, and I am sure the Convention received it in the spirit in which it was said. I am one of those who believe that politics has no place in a Constitutional Convention. I belong to a political party. I believe in political parties. This country cannot, and no free country can, get along without the existence of political parties. They are indispensable. I have the highest respect for gentlemen who belong to different parties from what I do. It is right that they should. But, sir, in a Constitutional Convention—a Convention to make the organic law of the State for twenty years, I do insist that party politics has no place in it; and therefore I have acted upon that belief. But, when a gentleman makes an attack, such as the gentleman from New York [Mr. Hutchins] has made this morning—when he charges others substantially with being traitors—with having made reports to this Convention for political and partisan purposes—I feel that it is not only my right, but my duty to defend myself as the occasion demands. So far as that gentleman has discussed the merits of this report, I have no fault to find with him. The Finance Committee has, from the very outset of this discussion, invited any gentleman who chose to come forward and dispute the facts stated in the report. We have asked for investigation and scrutiny into the statements in the report. I am not alone entitled to the credit of that statement, or the discredit of it. The gentleman from New York [Mr. Opdyke] a member of that committee, was associated with me in getting up a statement of the amount of the debt and taxes. So far as the language of the report is concerned, I am responsible for it myself; but the figures contained in these two statements of the amount of debt and of taxation, my friend, Mr. Opdyke, had quite as much to do with as I had, and so far as I know it received the assent of the entire committee. Sir, it is a truthful statement. It is a statement that no man can successfully contradict; nor has the gentleman from New York [Mr. Hutchins] with all his talk, refuted one single item in the report. He says it is wrong to take one-fifth of the taxes paid, or to assume

that New York paid one-fifth of the indirect taxes of the government. He says the population of the State of New York is only one-ninth that of the whole Union, and therefore we should only have taken one-ninth of the amount of taxes. Does that follow? By no means. The census from which the gentleman gets his figures, and which shows that New York is one-ninth of the whole population of the Union, was a census taken before the war. It was at a time when there were three or four millions of slaves at the South, worth three or four thousand millions of dollars. It was before the devastating power of war had destroyed the property and labor of the South. The value of property in the South before the war is no criterion for its value since the war. They have been impoverished by the war, their property destroyed, and to-day they are held under military despotism, in a state of vassalage, unable to recuperate their energies, or bring out and develop the resources of their country.

Here the the gavel fell, the gentleman's time having expired.

Mr. BEADLE moved that Mr. Church be allowed to proceed. There being no objection, leave was granted.

Mr. CHURCH—But, sir, we did not rest upon the fact that the South had been impoverished, and therefore her wealth or property was not as much as before the war. We went to the official records in Washington. My friend from New York [Mr. Opdyke] obtained from the department that collects the internal revenue, the fact that New York paid in 1866, one-fourth of the whole amount paid into the treasury. But, sir, at my suggestion, this was reduced to one-fifth; for I desire to make an under, rather than an over-estimate; and the gentleman from New York [Mr. Opdyke], in his remarks the other evening, showed that instead of \$62,000,000, put down as the proportion of New York of the internal revenue, by an analysis of this tax, it should be \$67,000,000, five millions more than the committee put it; and that the tariff, if you add to it the profits which the consumer has to pay upon the amount paid into the treasury of the government, will increase that sum very largely. We took only the amounts which the people of the State paid into the treasury of the government, and made no allowance for the payment of profits upon this amount, the property passing through three or four hands, who make from five to ten per cent profit each. The gentleman says, "There is no date to this amount." No date! On the contrary, the date is specifically stated: "The amount of internal revenue received by the United States government during the fiscal year ending 1st July, 1866," was so many dollars. The date and amount are given precisely and exactly; and the proportion of New York put down at one-fifth, making \$62,181,398.80. It is true, Mr. Chairman, that it was impossible to say precisely how much the people of this State paid of the tariff; but inasmuch as the tariff operates upon the same principle that the internal revenue does and is paid by consumers of property used, the proportion of the tariff must be about the same as the proportion of the internal revenue,

and we estimated it accordingly. And instead of its being an over estimate, I apprehend it is an under estimate. The gentleman says that the unascertained indebtedness mentioned by the committee is fictitious and imaginary. The committee only say that the debt amounts to so much, "saying nothing of the unascertained national indebtedness, which high authority has placed at about the same amount." We did not undertake to say how much it was, but stated that high authority had placed it at the same amount as the ascertained indebtedness. Now, sir, the *New York Times* stated in an article which I have no doubt every gentleman of the Convention has read, that the unascertained indebtedness of the government equals the ascertained indebtedness, and Mr. Morrill, chairman of the Committee of Ways and Means in the House of Representatives, in a report to that body, I think stated it at a much larger sum than that. And this is all the committee said upon that subject—that high authority stated the amount was equal to the ascertained indebtedness. The gentleman complains of capitalizing the amount of taxation. What the committee says about it is this: "If this excessive annual taxation should be capitalized, it would require the sum of \$3,000,000,000 at six per cent to pay it, which is \$1,400,000,000 more than the assessed value of the whole property." The gentleman does not deny the statement made by the committee, but says that the value of the property of the State is more than \$3,000,000,000. Well, sir, our assessed value is \$1,600,000,000. I doubt whether the real value of the property, if you take out the indebtedness of citizens, amounts to more than \$3,000,000,000. But if you double that amount, and call it \$6,000,000,000, it would take three per cent upon that sum to pay this taxation; and, as I said the other evening, there is no people on the face of the earth, and never has been, that can pay permanently a tax of three per cent on the full value of all their property. It cannot be endured, sir. So that, take the statement in either way, and the next paragraph of the report is entirely true. "If, therefore, the present amount of taxation is to be regarded as permanent, and cannot be materially reduced, the unwelcome truth must be acknowledged, that the property of the State is mortgaged to more than the amount of its full value." Whether you call the value of the property \$3,000,000,000, or double that sum, \$6,000,000,000, if the amount of this taxation is permanent, the property of this State is mortgaged to the full amount of its value. We hope to be able to reduce the taxation and are laboring for that object. Now, sir, for what purpose did the Finance Committee present this statement? For what purpose? For no political purpose whatever, as charged. The gentleman is oversensitive on the subject. A project was presented to enter into a large expenditure of money, and among other arguments against it, the Finance Committee produced the argument and showed that we were already heavily burdened with taxation, and that, therefore, we should not enter into any scheme of expenditure of money, except under the greatest necessity. That was the argument, and the only object of it. The Finance Committee has not been

alone in presenting this argument. Almost every gentleman who has spoken against the expenditure of money used the same argument—gentlemen belonging to the republican party as well as those belonging to the democratic party. It was considered a fair, legitimate argument, as it is, that we should not go headlong into additional expense and taxation so long as we were already overwhelmed. It is suggested to me, Mr. Chairman, that the gentleman from New York said he did not know but we referred to the rebel debt, as the unascertained indebtedness. The gentleman from New York, I suppose, possesses common intelligence, and if he does, I assert that he *does know* that we did not refer to any such thing. The unascertained indebtedness is made up of the thousand and one claims of those who have had their property destroyed, or in some other manner have suffered, and have claims against the government on account of the war, which have not been presented. No democrat or democratic newspaper has over intimated that the rebel debt ought to be paid. The Southern people themselves, in almost all their Constitutions, have inserted a clause prohibiting the payment of it. They have pledged themselves in every possible manner, that they do not expect it ever to be paid; and certainly the democratic party of the North feel that they have load enough upon them, to pay the debt incurred by the government, without assuming that incurred by the rebels. Why, then, longer keep this ghost of departed humbugs alive to frighten the weak and timid? Now, sir, upon this question of taxation, which is one of the most important questions that has or can come before this Convention, I trust the Convention will consider it with that calmness and deliberation which its importance deserves.

Mr. LAPHAM—I desire to know from the gentleman when we may expect the report of the majority of the committee on that subject.

Mr. CHURCH—I stated (and if the gentleman had been in his seat he would have heard it) that the majority of the Finance Committee have decided not to report to this Convention any plan upon the subject of assessment of taxation, and I have given that as the reason for not presenting a report—the majority have determined that it is inexpedient. Now, sir, we are overburdened with taxation, and the gentleman from New York [Mr. Hutchins] will have to talk a great while longer than he has to convince the people of the State that they are not. Does he suppose his puny voice will have the least effect upon the four millions of people of this State, in convincing them that they are not taxed and ground to the earth with every species of taxation, that they cannot turn round without contributing to the government, and that at every corner of the street they are met with a public officer, who requires a statement of some kind or other for purposes of taxation; that when they go to purchase the necessities of life, the price is increased by one-fourth or one-third of the value; and that the direct taxes are three times what they were? Does the gentleman suppose that he can convince the people of this State, after all this, that they are not burdened with taxation? Why, sir, he can as soon stop the surging torrent of Niagara

with a feather, as to attempt, by this balderdash, to convince the people that they are not an overburdened and overtaxed people. They need no man to tell them of that. The laboring masses of this State feel it. The farmer, mechanic and professional man—all feel keenly the withering influence of taxation—they suffer now, and their children and their children's children will suffer afterward. It is our duty to accept the situation as we find it and practice the self-denial and self-sacrifice which the circumstances that surround us demand. It is cowardly and deceptive to deny the truths and the gentleman from New York has no right if he could, to deceive the people as to the real situation. Let us rather apply a remedy for the excessive burdens of the people, not by talk and pretense, but by effective and salutary reforms. That the people are unwilling to meet these taxes, I do not deny; but because they are thus taxed, they are opposed to increased expenditures of money. Sir, the systems of taxation are most unjust. In the first place you have \$1,000,000,000 of government securities which are exempted from taxation entirely by a law of Congress, which I pronounce unconstitutional, arbitrary and unjust. I think, that the government of the United States, when it issues its securities, and those securities get into the hands of individuals of a State, has no right to exempt them from taxation—no power to do it. They become the property of individuals, within the jurisdiction of the State. The State protects the property, and that property is liable to contribute to its support. I am aware, that the supreme court of the United States, has decided otherwise, but in my judgment (and I speak with the utmost respect for the supreme court of the United States) it is a judicial fallacy, and one that, sooner or later, will be overturned. That decision was founded on a remark of Chief Justice Marshall, in the case of the State of Maryland against McCullough, that "the right to tax involves the right to destroy." With the highest respect and veneration for the distinguished Judge who made that remark, I take the liberty of denying its soundness. The right to tax does not involve the power to destroy. The right of the State to tax government securities in the hands of individuals in the State, protected by its laws, involves no power to destroy these securities, by excessive taxation or otherwise. The State has a right to tax them equally with all other property in the State—but no other right or power. The very moment that the State should undertake to discriminate against those securities, then I think such action would be invalid and void on the part of the State. But, sir, up to that time, up to the point of inequality of taxation, the State must have the same right to tax them as all other property within the State, or else there is no power in the State government. If the remark of Judge Marshall is true, it will apply as well to the United States government, as to a State government. If the right to tax, on the part of the State, involves the power to destroy—so the right on the part of the government of the United States to tax, involves the power to destroy. The government comes into your State and taxes the salaries of your State officers, the same as it taxes the income of

any other person, and it lays its hand upon all the officers of the State government. If that right involves the power to destroy, then the United States can tax every salary of a State officer up to the full amount of that salary. They have no such right. They have the right, I admit, to tax those salaries equally with all other incomes in the United States, from whatever source; but, if they should attempt to discriminate against the officers of the State government, and tax them excessively, for the purpose of discriminating against them, their action would be invalid, because it would tend to destroy the State government. The relation between the States and the general government is perfectly simple. The United States government has the power to tax equally all property within its jurisdiction; and a State all property within its jurisdiction. Such taxation must be equal; and the attempt on the part of the United States government to tax State banks out of existence, by a tax of ten per cent on their issue, is, in my judgment, as unconstitutional and void as an act can be. Why? Because it discriminates against a State institution. They have a right to tax those banks equally with all other property; but the United States government has no right, under the pretense of the power of taxation, to come into the State and destroy a State institution. They have no right to tax the school system, so as to tax it out of existence; they have no right to tax internal improvements, so as to tax them out of existence; they have no right to tax State officers, so as to tax them out of existence; because if they can, then they can in this indirect manner, wipe out and expunge the States entirely, under the taxing power. The power to tax involves the power and right to tax equally, nothing more, and it is the same on the part of the State. We have the right to tax these securities equally with all other property within the jurisdiction and protection of the laws of this State. The laws of Congress exempting these securities from taxation constitutes in no respect a contract with the public creditor, as has been sometimes asserted. The law was not passed until a large portion of them had been issued, and it applied as well to those which had been issued as to those to be issued thereafter; and of course, as to those that had been issued, no man would claim it to be a contract on the part of the government, that they were to be exempted from taxation. It is simply a law of Congress. As to the indebtedness incurred after that time, those who loaned money took securities subject to that law of Congress, and of course subject to the power of Congress to repeal it. I hold that Congress has no power to make this discrimination in favor of United States securities; but if they have the power it is their duty to repeal it at once, and put those securities on the same footing as all other property. Now, sir, I regard this as a great injustice to the laboring masses of the State. It compels the poor man to pay the rich man's tax. That is the long and short of it. It is wrong in every possible view in which we can look at it. It tends directly to make the rich richer and the poor poorer. It makes the poor contribute of their hard earnings

to pay the contributions to the government which the rich men, who are able to hold their bonds, ought to pay. There are other evils in the system of taxation. The gentleman from Onondaga [Mr. Alvord] stated a truth, last evening, when he said that the great burden of taxation in this State fell upon real estate. It is a truth, sir, and it is wrong. There is an evil here which ought to be corrected. A large portion of the personal property of this State escapes taxation. I appeal to every gentleman's personal experience in his own neighborhood or town, if the men who own personal property do not get, in one way or another, that property exempt from taxation. This is an evil that ought to be remedied. There are, undoubtedly, difficulties in applying a remedy. I have given the subject a great deal of thought and examination, and I find great difficulty in applying a remedy which will prove satisfactory. But I do not see the objection to the plan contained in the report of my friend from Chautauqua [Mr. A. F. Allen], of requiring a sworn statement, which some gentlemen seem to entertain. The government has a right to come to a man and ask him to disclose the property which that government protects. That is a right which no man can deny exists on the part of the government, and so far it is not inquisitorial—it is legitimate. If I have \$100,000 in my pocket, whether of notes, mortgages, bonds, or other securities, not open to the observation of the public, the government has a perfect right to come to me and say, "Sir, we desire to know what property you have, around which we throw the shield of protection;" and so far as I see, the government has a perfect and legitimate right to call upon every citizen which it protects. But, it is said, that if you require the citizen to go a step farther, and not only disclose all the property which he has, but require him to state his indebtedness, then it becomes inquisitorial, and may result in great disadvantage to him, to his credit, and to his business. I admit there is some force in that position. There is some objection, I concede, in requiring a citizen not only to make a statement of his property, to go upon the public records, but also the amount of his indebtedness. It is an interference of an inquisitorial character into his private affairs which might result in great injury to him and his creditors.

Mr. BELL—I believe the proposition of the gentleman from Chautauqua is, that the citizen shall not be required to state his indebtedness; it is that there shall be no abatement on account of indebtedness. Therefore it will not institute an inquisition.

Mr. CHURCH—Yes, sir; that is the only remedy there seems to be, to avoid a statement of the citizen's indebtedness—not to allow him to deduct that indebtedness from his property when it is assessed. It is said by gentlemen that this will operate with great severity upon the commercial community, and especially upon the city of New York; and there are cases I think (for I am disposed to be entirely just on this subject) where it may operate unjustly. I have some doubts, after the most mature reflection, whether a uniform rule prohibiting the deduction of all indebtedness, would operate fairly and

justly in every instance. The only class of cases where it might operate unjustly is in the large commercial towns, where persons deal in immense amounts of personal property, passing through their hands, and holding it but a short time, and where their indebtedness is also very large. If you tax the property and the indebtedness to them, it might create a burden which, to some extent, would interfere with that free commerce which we are all in favor of. I do not know whether it would or not; I have thought perhaps it might. But this plan of deducting indebtedness from property furnishes the means under which nearly all the personal property of this State escapes taxation—that is, under the pretext of owing debts, the personal property does not find its place upon the assessment rolls. I speak of the practice in the country. I know nothing of it in the city. But, in the country, and in the towns and cities in the interior of the State, the rule is almost universal for persons to get up an indebtedness of some kind or other, so that their property may escape taxation. Some persons will give notes to their children, others will exchange notes with their neighbors, and others will enter into obligations for the purpose of creating a liability, just about the time the assessors come round; and the rich men in the interior of this State (I do not know how it is in New York) do not pay anything like their proportion of taxes, for the reason I have stated. Now, sir, there ought to be some remedy. Perhaps the proposition introduced by the gentleman from Chautauqua, to prevent all deduction of indebtedness from personal property, should be modified, but a uniform deduction of indebtedness is wrong. There is no principle upon which it can stand a moment; none whatever. If a man has property protected by the government, it is of no sort of consequence whether he owes for it or not, so far as this question of taxation is concerned. If you were going to ascertain what a person was worth, you would take his assets and deduct his liabilities. But when ascertaining what he should contribute to the support of the government, it is of no consequence whether the property he possesses is owed for or not. It is protected just the same, and he should contribute to the expense of that protection just the same.

Mr. BICKFORD—I would like the gentleman's opinion on this point. Suppose a man has a farm which he has mortgaged, ought the farm be taxed to its full value to the person who is in possession, and the mortgage to the person who holds the mortgage also?

Mr. CHURCH—I presume the gentleman from Jefferson knows that such is the law now. I think it is right; but I think the same principle, so far as it can be with safety to commercial interests, ought to be applied to personal property. I would like the rule uniform as to real and personal estate. The farm is protected by the government, and should contribute its full proportion for the expenses of that protection. The mortgage in the hands of the holder, is property also, protected by the government, and should contribute to its expenses. For the purposes of taxation, a valid promissory note is as much property as anything else.

Mr. SCHELL—I ask whether the gentleman means by personal property, movable property or choses in action.

Mr. CHURCH—I mean both; but, as I have stated, I am inclined to think that there ought to be a qualification in relation to movable merchandise that we find passing from point to point, not exactly *in transitu*, but in principle *in transitu*. Perhaps it ought to be qualified. I think it ought.

Mr. TILDEN—I would like the gentleman from Orleans [Mr. Church] to state whether he is of opinion that the true basis of taxation should be the amount of property that passes through a man's hands during a year, five, ten, or twenty times what he owns, rather than his property which he does own, or the income which he possesses.

Mr. CHURCH—I suppose the property which passes through a man's hands, as a question of taxation, ought not to be doubled, trebled, and quadrupled. I do not claim any such position as that; but the uniform amount of property which he has during the year, the average amount which he has.

Mr. TILDEN—I do not make myself understood. I mean the amount in his possession which he does not own, which belongs to other people, or for which he owes an equivalent amount of credit.

Mr. CHURCH—I do not quite agree with the gentleman, that he does not own it, because he owes for it, for the purposes of taxation. In one sense, when you talk of what a man is worth, you deduct what he owes; but when you talk about property for the purposes of taxation, you talk of what he has that is protected by the government. I am not indicating, Mr. Chairman, any definite remedy. I am only pointing out what the evil is. I do not say that the proposition of the gentleman from Chautauqua is the best that can be made, but I do say there is an injustice in relation to taxation which amounts to oppression. I do say that the real estate of this State bears an undue and unjust proportion of the burdens of the government, and sooner or later, unless some remedy is applied, this evil will culminate in some act on the part of the real estate owners of this State which may be greatly disastrous to the credit and interests of the nation. Sir, it will not be borne. You bring the products of the field down to their normal value in price, and this injustice will not be borne. It ought not to be borne. I would do no injustice to any class. All I ask is equality. No honest man ought to object to that. All property ought to bear the burden equally, and no man ought to object to equal taxation. It is wrong to discriminate against real estate, and to tax the mortgage and the farm, when in the case of personal property you only tax one of them. It is wrong to discriminate against real estate, and you should make it uniform.

Mr. TILDEN—I would like to ask the gentleman from Orleans [Mr. Church], in a case where a man owns real estate, and owes money, secured by a mortgage on that estate, and owns personal property, if that personal property is not allowed to be set off against the mortgage.

Mr. CHURCH—It is. But in a case where he has not personal property, it is not allowed; and

that makes an inequality and injustice, while in all cases of personal property, the party is allowed to offset. All I ask is to make the whole uniform. I ask the Convention to consider this subject and apply some remedy to this enormous evil that exists. There is no reason why taxation should bear so heavily as it does upon the people. If you equalize the burden on all property it would not happen. The amount of property would be increased, the assessment rolls would be much larger in amount, but the rate would be diminished; and if you equalize the burden, all the citizens will bear it with patience, and maintain the credit of your government until the last cent is paid. But if you impose these taxes unequally, if a large class feel that they are unjustly burdened and dealt partially with, in the end you will produce a state of feeling which may result in action on their part disastrous to the whole interests of the country.

Mr. OPDYKE—Mr. Chairman, I find myself in a very unexpected position in the debate which has sprung up, this morning, on the report of the Finance Committee, of which I am a member. I find one of my colleagues from the city of New York [Mr. Hutchins], a leading member of the party to which I belong, denouncing that report with great harshness, and declaring that it was designed to aid and strengthen the party to which he and I are opposed. I do not, Mr. Chairman, feel embarrassed by this position; but I claim the indulgence of the committee for a few minutes, while I define my own position, and vindicate my action in the committee. In the first place, I claim to be a member of the republican party. I have been one of its members from the time it was organized. I am proud of being a member of that party, for I believe that, during its short career, it has performed a more beneficent mission than any other party that has ever existed in this country or any other. During a period extending but little beyond a decade, it stopped the spread of one of the greatest political evils which existed in this republic; and aided by the folly and madness of those who had that interest specially in charge, thank God, it has exterminated it forever. But, sir, while I claim to be a republican, I am glad to know that, in coming here, I brought no partisan feeling with me. I came here, with my limited knowledge, to exert my best efforts to improve the Constitution of our State. According to the best judgment that God has given me, that is the only way in which I can properly perform the duty assigned me here. I have not turned, nor shall I now or hereafter turn one hair's breadth from that rule of action. Now, sir, I think my friend from New York [Mr. Hutchins] in denouncing the report of the Finance Committee, a report which I signed in connection with others, has done the committee, (inadvertently, I hope) great injustice. We may search the explanations accompanying the article reported by that committee from beginning to end without discovering a single word, or a single insinuation that the republican party is responsible for the onerous taxation under which we labor, and the enormous public indebtedness to which we are subjected. That committee, sir, was charged with the duty of investigating the financial condition of the State, with examining its

indebtedness and taxation, and with the duty of recommending to this Convention such action as in the judgment of that committee would best conduce to the welfare of the State. In that examination we deemed it due to this Convention, and due to the people of the State, that we should ascertain, with all the accuracy we could, the amount of our public indebtedness and the amount of our taxation, so that the members of this Convention and the people of the State might know precisely the financial condition in which it stood. We were prompted to do it for another reason. We remembered the debate, in the early part of the session, as to the matters to be referred to the committee, and that it was developed in that debate that there were many members of this Convention anxious to enter upon an enlargement of the canals, which would greatly increase the indebtedness of the State. After a full examination of the subject and the best consideration we could give it, we were satisfied the enlargement was uncalled for; and we hoped it might tend to prevent unwise or improper action in that direction to submit, with all attainable truthfulness, the financial condition of the State. I have said before, that every portion of the financial article reported by that committee met my entire concurrence. I believe the article, as a whole, to be eminently wise and judicious, and calculated to preserve the financial honor and prosperity of the State. With regard to the explanations that accompanied the article, the honorable chairman of the committee [Mr. Church] has stated that he is responsible for the language of that portion of the report. He has told you also, that for the tables of statistics furnished in these explanations he and I are jointly responsible; all of which I confirm. His statements are strictly accurate. The chairman of that committee will remember that when the explanations attached to the report were laid before the members of the committee, no objections were offered. At least I heard none. Four members of the committee gave their unqualified approval to the article. Whether they had any objections to the explanations or not, I am unable to say. I have never heard them offer any. Sir, if I had written those explanations I should doubtless have stated them differently; probably not so well or so forcibly, but I should have left out some of the deductions; and the chairman of the committee will remember that I so recommended; my objections to them being that they were unnecessary, and might injuriously affect the credit and interests of the people, and of the State. So much is due to myself. Now, sir, so far as my colleague from New York [Mr. Hutchins] has attacked the statement of facts, and the statistics giving the amount of the public indebtedness of the people of this State, and the amount of taxation to which they are subjected, his criticisms have been very moderate, and, so far as they have gone, they are not accurate. In the first place he maintains that our proportion of the national debt should be put down at \$250,000,000 instead of \$500,000,000, as estimated by the committee. I should like to know for what reason, when the statistics show that we pay about one-fourth of the taxes incident to

that debt. These statistics show that we pay fully one-fourth of all the taxes collected by the United States internal revenue department. Why then should we be charged with only one-tenth of the indebtedness? As the chairman of the committee has stated, according to the official returns, we actually pay one-fourth; but to be clearly within the truth, we have stated it at one-fifth. I said the other evening that a subsequent analysis of these returns has satisfied me that we made a larger abatement than was proper, and that we might have safely placed it from five millions to seven millions higher than we did. I think any citizen would be likely to estimate his share of a joint liability in proportion to the interest and principal he has to pay. There is no other accurate or honest way; and therefore it is that I must pronounce it preposterous to declare that the proportion of the national debt to which the citizens of New York are liable is only one-tenth of the whole, when in point of fact they actually pay nearly one-fourth of all the liabilities of the government. We put it at one-fifth, and nothing has fallen from the lips of the gentleman from New York [Mr. Hutchins] to invalidate the correctness of these estimates. The only other point he criticises is as to our share of the duties paid on imports. In my judgment the estimate of one-eighth, as the share paid by citizens of this State, is clearly within the limits of what they actually pay. It is known that the largest portion of the goods imported are articles of luxury consumed by the wealthier classes. It is also known by the gentleman that there is more wealth and property in this State than in the average of our country. The States lately in rebellion are so impoverished that they can scarcely consume these articles at all. They have nearly all been consumed within the free States, and I think when we consider the liberality of expenditures in the city of New York and the State of New York—when we consider the great aggregation of wealth in the city of New York, the owners of which consume much more than their relative proportion of such articles, I am justified in saying that the proportion consumed in this State probably comes much nearer to one-fourth than to one-fifth of the whole. I have no doubt that if the facts were ascertained, it would so appear. But, sir, suppose it possible that our share is less than one-fifth (though I deny it), we have made no account whatever of the large additional amount the people pay in indirect taxation on imported articles. As I said the other evening, including the expenses of collection at the custom-houses, with their thousands of officials, and the profits charged on the duties paid to the government by the importers, the jobbers and the retailers in their sales of imported articles, before they reach the hands of the consumers, they are charged with at least 50 per cent in addition to the duties actually received by the government. Therefore the gentleman has failed to invalidate, in any particular whatever, the entire accuracy of the facts stated by the Finance Committee. As I said before, as to the deductions, which are hypothetical (and which, in the hypothetical sense in which they are used, I believe to be strictly accurate), I dis-

claim any responsibility for them. It is due, however, to the chairman of the committee to say that in the hypothetical form in which he presents his deductions, I believe him to be altogether correct. Now, sir, I think it is manifestly unjust to the Finance Committee to charge them with anything that has been done outside of the Convention. If political partisans have garbled our report, and sent it broadcast for political effect, it is no fault of the committee; and I am glad to know, from the power of truth, that ultimately every such effort will react upon those who attempt it. Mr. Chairman, the subject of taxation, which is now before the committee, is one of great magnitude, and one on which I desire to express my views, but the short time allowed me will not permit my doing so with any degree of fullness. Therefore I shall embrace some other opportunity to give my general views on the subject. Still I will consume what time remains to me now in expressing some general views which I have in regard to it. Taxation is one of the incidental powers of government necessary to its continued existence. It should be confined to the strict wants of the government. A proper, beneficent government should confine its expenditures within the smallest limits that will enable it to preserve the freedom, secure the rights, and protect the persons and property of citizens from force, violence, and fraud. After it has performed these duties, it has no right to go beyond them in the expenditure of money. Now, sir, in assessing these taxes upon the community, various methods have been adopted. The government of the United States, with the sanction of the people under the administrations of all parties, have adopted the indirect method (except since the war) of collecting their revenues by duties on imports. I endeavored some days since to show that that indirect method of bringing the taxes home to the consumer does not distribute them as they should be distributed, in proportion to the degree of wealth, but distributes them in proportion to the necessities of the community. In other words, that it brings them home to the great laboring and industrial classes, one of the worst methods, in my judgment that has ever been adopted in any country. Another method which the United States have recently adopted, and which has been criticised here this morning, is a tax upon incomes. I do not subscribe to the justice of the criticisms that have been offered on that kind of taxation. I have but one objection to it, and that is its demoralizing tendencies. It leads to efforts to conceal from and defraud the government; but in every other respect it is one of the most equitable taxes that can be imposed. Why should not men pay on their incomes in proportion to the amount they thus receive? Nothing in my judgment could be more equitable. Next to that, or rather superior to it, direct taxation upon property, whether it be real or personal property, and assessed according to its actual cash value, is the most equitable mode of taxation ever adopted by any government. Unfortunately, the people of our country are not prepared for the general adoption of that mode of taxation. They are unwilling to meet the tax-gatherer face to face. In relation to all our State and local taxes, we bring

them to that ordeal. Our State system of taxation has been adopted on that principle, but most ineffectually and unfairly enforced. I believe if all the taxes paid by the people were assessed and collected by that method, so that they could be brought home to every man who paid them, they would be diminished very promptly, at least one-half. Now, sir, this State has never placed in its Constitution, I believe, any provision regarding taxation. It has left that power with the Legislature; and I am not clear, with all the deficiency which the Legislature has shown on the subject, but it is most properly left with it. Upon that point I shall have something to say hereafter. But, sir, we must all admit that the operation of that system has been most defective. We find that year by year the assessed value of real estate is diminishing, growing less and less, and that the personal property escapes almost entirely. The result is great injustice and great inequality. Now, sir, what I would wish to see is a provision placed in the Constitution of the State that would insure, beyond peradventure, the assessment of real estate at its actual cash value; and that would compel every person to make out and subscribe to a list of his personal property under the sanction of an oath. What we need is equity, and so long as the absence of this requirement exists, we shall find every man trying to escape more and more of his share of taxes on personal property, until, as a final result, they will fall almost exclusively on real estate, and that not assessed by any fixed rule or according to its value, but according to the capricious views of the assessor, or the artfulness of the owner. Something should be done. I was in hopes that the Committee on Finances, in discussing the matter, would have prepared an article to bring about the rule I have suggested; but I found a majority of the committee unprepared for it, and under the conviction that the people were unprepared for it. One of the members of the committee (a gentleman from New York) made the suggestion that public morality was getting so low, that if we should increase the assessed valuation of taxable property to double what it is to-day, those who have the power to increase these taxes would bring them up to double what they are now; and all we would gain would be the privilege of paying double our present taxes. The observation struck me as being, in the present condition of public morality, too near the truth. With regard to the immediate proposition before us, that portion of it which declares that citizens shall be assessed, not only for all the property they own, but for all the securities they have in their possession, without deducting indebtedness, I can only say the proposition strikes me as monstrous and certainly most unwise. You have only to look at its effect on the city of New York to become satisfied that its adoption would at once drive the entire mercantile class from that city and from this State to adjoining States. Look at it for a moment; consider what an immense business there is done mainly on a credit running from ten days to six months, which it would be safe to average at three months. It is known that these credits are mutual; that almost every merchant is largely

indebted, and has large amounts due him. I suppose it would be a low estimate to say that this mutual, reciprocal indebtedness (which is nothing in the nature of property) is one thousand millions of dollars. It represents nothing but reciprocal indebtedness and is not property in fact. By taxing these credits without allowing the debts to be deducted, as the article before us provides, we should tax a thousand million dollars of personal property in the city of New York which has no existence there.

The hour of two o'clock having arrived, the PRESIDENT resumed the chair, and the Convention took a recess until four o'clock.

AFTERNOON SESSION.

The Convention re-assembled at four o'clock, when proceedings were resumed.

Mr. SMITH—I ask leave of absence for myself until Monday evening next. I ask it because my health is not very firm, and I feel very much exhausted by our protracted sessions.

There being no objection, leave was granted.

The PRESIDENT—The Chair would ask leave of absence until Monday next, in consequence of a telegram just received.

There being no objection, leave was granted.

Mr. CHESBRO—I would like to ask leave of absence until Tuesday morning in consequence of a letter just received.

Mr. ALVORD—I cannot consent to that leave of absence. If the letter just received is one announcing the illness of a member of the gentleman's family I would have no objection.

Mr. FOLGER—Perhaps it is a dunning letter. [Laughter.]

The question was put on granting leave, and it was declared carried.

The Convention again resolved itself into a Committee of the Whole on the reports of the Committee on the Finances of the State and the Committee on Canals, Mr. CURTIS, of Richmond, in the chair.

The pending question was announced to be on the amendment offered by Mr. Magee to the amendment of Mr. A. F. Allen, Mr. Opdyke being entitled to the floor.

Mr. ALVORD—The gentlemen from New York [Mr. Opdyke] not being here, I propose to say a few words at this time in reference to the pending question. The gentleman from Orleans [Mr. Church], in speaking of attempts to get away from taxation on account of personal property, gave some examples. There are others, sir, that are well known and commonly and ordinarily practiced by persons who have large amounts of property, both in the city and in the country. It would be well enough, in this connection, to particularize some of these attempts to get rid of taxation. Among other things, sir, we have official bonds given by different officers holding places of trust at the hands of the people, either locally or as State officers. Such officers find no difficulty, in these positions which they occupy, in not only getting a number sufficient for their purpose, but in absolutely having persons ask the privilege of getting on their official bonds, and then these persons, by a sort of conscience which I do not under-

stand, when the tax-gatherer or assessor shall come around for the purpose of assessing their personal property, in their minds consider this a liability which they may possibly be under the necessity of meeting in dollars and cents, and thus calming their consciences in regard to the matter—swearing off their personal liabilities to taxation.

Mr. SCHELL—Will the gentleman allow me to ask him a question?

Mr. ALVORD—Certainly.

Mr. SCHELL—Suppose the person the gentleman refers to as the surety on a bond, owned \$100,000 in Central railroad stocks, and had \$10,000 in cash, and was in debt \$10,000; under the theory of the law relating to taxation, he would offset the \$10,000 which he owed against the \$10,000 in hand; that \$100,000 would be taxable property under which he would justify on the bond referred to, he being the owner of \$100,000 in property over and above his debts.

Mr. ALVORD—I am not talking about any such case. I am speaking against the whole idea of offsetting indebtedness against personal property. I will take another case. The State of New York, in its operations, is in the habit of receiving large amounts by way of canal tolls; and it is under the necessity, situated as the country is, of making the deposits of thousands of dollars in the locality where they are received. And they ordinarily select banks of good standing, with abundant surplus beyond their capital; but under the rule which has governed in the past and governs now, they require, in addition to the bonds of the bank itself in its corporate capacity, the bonds of individuals, for the purpose of securing the State against any possible loss or deficit. And, sir, you will find very many of the banks in the interior where the entire of the directors become jointly and severally holden in a specific sum by way of penalty, to take care and protect the State from any loss that might be occasioned by the bank holding these deposits and refusing to pay them over. And in very many instances, sir, I know that these men, each of them, although the bank is abundantly good, and able, both in its capital and in its assets beyond its capital, and each and every one of the individuals is able, three or four times over, to pay the amount which he has thus become quasi-security for, uses that as one of the items of their liability, to reduce their taxation upon personal property.

Mr. MURPHY—Under what authority of law?

Mr. ALVORD—On the ground that there is a possible contingent liability. I take it that they have no real ground of law for this purpose. There is no ground of law for it; but they acquit their conscience in regard to the matter and get rid of this taxation in that way. I know a case in my own county where an individual, unquestionably one of the wealthiest men in the county, and that wealth largely consisting of personal property in bonds and mortgages, having a large family of children who had grown up to years of discretion, and who had become workers in the world, who kept his day-book in this way. As he received money from A, B & O upon mortgages he first credited to the parties who had executed the mortgage, and then he gave credit on

the book to the individual son or daughter from time to time for the money received from that mortgage; but never, in any one single instance, does he make the assignment that the law contemplates for the purpose of passing the mortgage; and never, in any one single instance, does he pay over to his children the identical moneys thus received. But when the tax-gatherer comes round he has no personal property. Now, sir, there are ten thousand ways for men undertaking to get rid of their liability to pay tax upon personal property; and there ought to be, and I trust that there will be, before this Convention shall conclude its labors, some way and means devised whereby, if we are to retain the idea of offsetting a liability or indebtedness against the possession of personal property, it shall be confined within such bounds, at least, as not to permit this wholesale method of getting rid of that liability. In answer to the question that has been very often put, "Why will you undertake to break down the young man who has large credit and no money, and who, upon the faith and strength of that credit, is enabled to do business?" I hold, sir, that the possession of goods, in a case where a man buys them and pays his money for them, and the possession of goods in the case where a man has been trusted for them, if the one is to be subject to taxation and the other is to be free from it, it is giving a credit to credit. It is compelling the man who pays taxes upon goods because he has bought them for cash to sell them at a less profit than the man who has bought them on credit; for the man who has bought them and paid his money for them has, as a matter of course, to pay a tax upon them, while, under this idea of offsetting an indebtedness against a possession, a man who has got the credit and escapes taxation, to that extent is so much ahead of the man who pays the money for the goods. Now, sir, the idea has, to some extent, prevailed that if you undertake to say a man ought to put his indebtedness on the other side of the question, so as to determine what is the actual value of his property, it is inquisitorial, that it will give rise to a great deal of trouble and difficulty, and break down a great many men who do not wish to be exposed in the community in reference to the actual value of their property. I answer, so far as that is concerned, that it is a fraud upon the community, if you undertake in that way to cover up the position which he actually occupies as a person of property. If A. B. comes to me, having a large store of goods, and with every outward appearance of wealth, and desires to purchase from me, upon the false pretense that he is a man of wealth, my property, and get credits for it, for two or three months, and in consequence of my having been thus mistaken I lose my property, he has committed a great wrong upon me. I say, sir, that, so far as it regards that matter, no man, I care not who he is, ought to have even the least shadow of a false pretense when he undertakes to exercise his credit for the purpose of getting along with his business. He should sail under unmistakable colors, with no false signal-light hanging out for the observation of the world, to decoy and lead men to their ruin. It is not wrong,

it does not hurt the honest, upright man—the man who depends upon his integrity, honesty and correctness of character and action in the past, to have him say to the people of the world, "It is true that I am worth but so many dollars, or I am not worth anything; but I have got my activity, I have got my energy, I have got my honesty, I have got my fixedness of purpose and integrity to support and sustain me; and I ask you, therefore, to give me credit based upon that, and upon no fictitious idea that I have got property." So I say, sir, it seems to me that there can be no sort of objection—even if you carry the arguments of the gentleman from Orleans [Mr. Church] clear to their extreme—to thus exposing to the assessor, under the oath of the party, and with all other appliances you can bring to bear upon the subject, just exactly the situation of each man in the community who asks the people, through their laws, to protect him in his interests and in his property. Sir, every man who appears in a court of justice, and who, under our laws, is subjected to a cross-examination in regard to each question relating to his property, enters his bond under the laws of the land, for the purpose of justice, to further and promote the interests of the country, and to give a clean breast with regard to the inmost secrets of his heart with reference to his property; and where the safety of the country depends upon the execution of just and wise laws, and it becomes necessary to take in equal parts according to their property, from each man, the means to put those laws into execution, why should not the same rule hold true when we come to ask him how much taxation should be impressed upon his property? I cannot see, sir, any difference between the two cases, nor any reason why the one should prevail in the one instance, and the other should be put in abeyance in the other. I tell you, sir, that it is a great and crying evil in this country, and in this State particularly, that our system of assessment and taxation is a failure, which is rapidly driving the people of the country down to the point of repudiation. I hold, sir, that the people of the State of New York, without distinction of political party, would willingly, if wanted by the government, pay the last cent of their income to the support and the sustenance of that government wherein they knew that they, equally and alike in proportion to their property, bore the impress of the burden of that government. But, sir, when one man can stand among his neighbors, and know that, in proportion to the wealth of each, he is paying his two, or his three, or his five dollars, for the one of his neighbor, then he begins to kick against it. Then begins to enter into his heart and his mind the idea of repudiation, because of the outrageous injustice of the infliction of this penalty upon him, and the entire and complete absolution of his neighbor, worth more than he, standing alongside of him, from the payment of any taxation whatever. I had hoped, sir, that in the argument of this question, above all other questions, nothing would arise of a nature calculated to disturb the harmony of this Convention. The only apology I have to make, sir, for my friend from New York [Mr. Hutchins], who addressed this Con-

vention this morning, for the remarks which he made, were these: that there was an irritation necessarily growing out of the fact that the paper in this city, and papers standing high in democratic affections throughout the length and breadth of the State, had seen fit to take the particular report now under consideration, and take from it garbled extracts, and append to it the idea that it was the thought and feeling of the democratic party of the country, and that there was a party in this Convention who were determined to take the opposite direction, who were determined to break down the old standbys of the democratic party, and in that way endeavor to use that report, through the operation of the party press of this State, in the interest of one party against another. I leave these gentlemen to their taste in that matter. So far as I am concerned, I have not thought it my duty to allude to it; and I should not now allude to it but for the occurrences of the morning. But it is, to say the least of it, certainly, sir, rather to be regretted that, notwithstanding the fact that nothing of that kind has been undertaken to be made use of in this Convention, in connection with this report, until this morning, that these parties and papers, being recognized organs of the party, should have undertaken to warp this report to that use, as they have done for the last three or four weeks. I for one, in the early commencement of this Convention, took occasion to state that I hoped, trusted and believed that we had come together here with no partisan feeling, with a desire to make an organic law for the people of this State, and for the whole people of this State, and that I believed each and every individual here who had taken the constitutional oath for the purpose of the performance of his duties here under it, came here with the intention to act in the same direction; and I found no fault, sir, at the time, with the declaration of an important member of this Convention, standing in his place upon this floor and claiming that, as the organ of the party to which he belonged, he had reason to find fault with the organization of this Convention. I thought that he had spoken without much reflection, that he had misunderstood his fellows and that he was not speaking for them or as their organ in making that complaint in regard to the conduct of the majority. I viewed, sir, with a great deal of pleasure the flight of the eagle from the far off Allegany of this State on two or three occasions [laughter] when it looked to me as if the harangue of the gentleman, from the beginning to the end, was political, with the idea, sir, that the eagle had soared so high in the clouds that by no possibility would it be given to mortal man, until after the elections this fall had passed, to have seen it in its returning flight toward the earth. [Laughter.]

At this point the gavel fell, the twenty minutes having expired.

Mr. RUMSEY—I move that the gentleman from Onondaga [Mr. Alvord] have permission to proceed in order. I want to know where that eagle went to. [Laughter.] I suppose by unanimous consent the gentleman can proceed. I have heard no objection.

The CHAIRMAN—If there be no objection the gentleman may proceed in order.

Mr. ALVORD—I do not know but what this interruption has cut my flight so short, that, crippled and weak, I may have to come back to earth rather sooner than I would otherwise have desired. [Laughter.] But I will endeavor to go up a little farther. I had not looked with any sort of suspicion whatever upon the apparent consistency of the course upon the part of certain gentlemen of this Convention when, from time to time, the question of adjourning from Friday to Monday evening has come up, and we have found that, with the exception of a few gentlemen belonging to that particular class of individuals that remain in this city, they voted solidly in a body from week to week and from day to day for putting off the business of this Convention. I find that they were so situated locally that they were necessarily confined within a very short distance of this place and that they were so, in business matters, connected with the greater and larger interests of this State that they feel resting upon themselves really a very peculiar, and great, and grave necessity to absent themselves from their attendance upon this Convention for the purpose of taking care of those great and overwhelming interests of theirs in the neighboring cities in the immediate vicinity of this capital.

Mr. CHESEBRO—Will the gentleman from Onondaga [Mr. Alvord] inform me how many votes of the majority it requires to accomplish that purpose?

Mr. ALVORD—The gentleman from Onondaga understands, sir, and he was about to express himself in that way—that there are, so far as political divisions in this Convention are concerned, a majority both of a quorum, and a majority of the members, belonging to one political party. But the gentleman from Onondaga also knows, and the gentleman from Ontario [Mr. Chesebro] also knows, that upon every division of this Convention, without a single exception, the larger majority of these gentlemen of whom he speaks have been found in favor of continuing in session, from day to day, during the secular days of the week, each and every time during the whole course of the Convention. And I say that he will find that the larger share of those of opposite political feelings have been found in the minority of the other party, in favor of these long adjournments. I say, and I desire to be distinctly understood, that I do not attribute it to any desire of those gentlemen, acting as a party, to delay or retard the business of the Convention; but that it was done, because, as I said, they represent a portion of the State where the transactions in business were necessarily and naturally larger than any other portion; and they were under the necessity, from their various vocations in business, to absent themselves a portion of the time from the duties incumbent upon them as members of the Convention. And again, sir, when, in the fervor of debate, and with the eloquence which the gentleman from Orleans [Mr. Church] always uses whenever he rises to address the Convention, he made allusion to the recent election in California, I did not want his ex-

planation that it was owing to the mistake of his friend from Richmond, in putting the words into his mouth at that time, that he then gave way to that expression. It was natural, with the fervor of an eloquent, able man; and it was a matter, sir, which, under any circumstances, almost any one, having the peculiar position which he had at that time on this floor, would without reflection, be very apt to indulge in; and I received the handsome and eloquent apology which he made at the same time he made the allusion, as perfect and entire reparation for any possible injury that might be done to the good feelings and harmony of the Convention. So far as regards the remarks which have been made to-day by the gentleman from Orleans [Mr. Church] goaded, as he thinks he was, by the speech made by the gentleman from New York [Mr. Hutchins], all I have to say with reference to it is not a part and parcel of our duty as members of this Convention to speak upon matters of that kind on this floor. I rely, sir, with perfect confidence, on the integrity, honesty and single-mindedness of the people of this State to support in the future, as they have triumphantly and gloriously supported in the past, the record of the history of the doings of that Congress that has stood between us, ever since Lee's surrender, and a complete and perfect dissolution of this Union. I leave this question, sir, for the arena of politics and the stump; and when, in the course of human events, it may become necessary for that gentleman and myself to appear in that public arena, there I propose to answer all these questions, and to leave it to the judgment of the people, and let their verdict determine whether the position which he has taken upon this floor in regard to these matters is right, or whether the positions taken by those who are opposed to him are right or wrong. Sir, I trust that there will not be, during the intercourse of our proceedings hereafter, the single exception of the unfortunate occurrences of this day, anything to mar the harmony which has heretofore guided and governed our actions from the commencement up to this time. But, sir, I desire to say a few words in answer to my friend from New York [Mr. Opdyke]. I agree with him that I would not bring in partisan feelings, as a mere partisan, within the limits of this hall of the Convention. But I would consider myself less than a man—I would consider myself recreant to my duty and my oath if, while I avoided making any provision in the Constitution of the State of New York for the purpose of getting a strategic advantage, merely for a temporary purpose for party uses, I did not undertake to implant deep in this Constitution, wherever it was necessary, the principles that guide my action in my political course as a partisan in this State and in this nation. And, sir, I would believe, also, that my political opponents, if they pretend to stand upon principle, and upon principle alone, as the guide of their action, would do less than their duty to themselves and their country if they believe in the principles which lie at the foundation of their action as a party, failed not simply in pulling the wires of partisan strategy, but in the principle that lies at the foundation of their action, if they

do not attempt, by all honorable ways and means, to impress them upon this Constitution. To that extent, sir, and to no more than that extent, am I a partisan. And I honestly believe, that the great mass of those men who act in this Convention are acting from that view of the case, and that view only. I desire no political advantage temporarily to be gained by anything that can be done here; and I do not believe that any honorable man, opposed to me politically, desires any. If he does, I consider that it makes a bar sinister over the word "honorable" attached to his name. In regard to the question whether we should or should not undertake to continue further the deliberations of this Convention at this time, I, for one, am satisfied and contented to do as the majority (not partisan) of this Convention shall say. If it is the deliberate judgment of the gentlemen composing this Convention that, with a due regard to the duty we should perform here, we can safely continue in the endeavor to get through with our labors and they eventuate in the submission of a Constitution to the people of this State for their approval at the coming election—although I believe, sir, that it is impossible—I am willing to remain and sit here and try it. I am willing, sir, to do anything that may be deemed desirable upon the part of the Convention. But I do not believe, sir, that there is within the sound of my voice a single individual, no matter what his partisan feelings may be, who can rise up in his place and say that he believes we can, by any possibility, submit such a Constitution as we should be willing to submit to the people of this State within the time, to which we are now limited. And it is for each member of the Convention, without any regard to his position, whether it be republican or democrat, without any reference to partisan feeling or action, without any regard to what may affect this, that or the other party—each to say, in his heart of hearts, divesting himself from those partisan feelings, what real judgment in this regard is, so far as it regards our duty, and the advantage of the people of the State of New York. Thus much, sir, I have said not for the purpose of opening the debate in the direction that it took this forenoon, but for the purpose of expressing my regret for what has occurred, and for the purpose of showing, in so far as I could, that there should not be, upon the part of any one in this Convention, a recurrence of like scenes in the future.

Mr. WAKEMAN—I for one, sir, am willing to unite with gentlemen here to devise some plan by which taxation may be made more equal than it is under the present law. But, in doing so I shall be compelled to vote against the amendment of my friend from Chautauqua [Mr. A. F. Allen]. In my humble judgment, on looking at that amendment in its whole scope and meaning, instead of equalizing taxation, it would make it more confused than under the present law. We all agree that property should pay the taxes of the country, and it should be made equal. On that question, I presume, we might all agree. But on the question of taxing property without making any deduction whatever on the ground of indebtedness, I am not prepared to assent to it, sir. I am willing that all kinds

of property shall be taxed, whether it belong to an individual, or an association, or a corporation; but I am not willing that a good character shall be taxed for the support of the government. Under our system of government, sir, the poor orphan boy may become a millionaire in the course of his life. He may hold the highest office within the gift of the American people, by reason of living under a government like ours. And when a young man, by industry, has acquired a character for integrity and honesty, so that he is entitled to credit, I do not want to place that good character on the assessment roll of the country. Why, sir, if a young man has acquired that character, and that capital in life, that young man in this country has acquired a credit; and if you tax him on every dollar's worth of goods for which he owes when he opens his trade, you make him pay for his good character. He does not pay a tax upon the property that he owns, because if he should make an inventory of his property, it would turn out that he was substantially a bankrupt, although, in point of fact, a good business man, and a man that had the confidence of the community. I, sir, am not willing to do that. The honorable gentleman from Onondaga [Mr. Alvord] has said that the man who buys his goods on credit without taxation would have an advantage over the man that pays for his goods in cash. I do not so understand it, sir. I understand that the young man I have referred to would have to pay interest on the amount he owed, and yet compete with his richer neighbor; and it would be enough for him to compete with him after paying interest, without having to pay taxes on the amount in addition. I say that in that case it would operate hardly. I will take a man differently situated from the one I have referred to. Suppose I was the owner of a farm that was worth and ought to be taxed on \$5,000, and there is a mortgage upon that farm of \$3,000; then I own a mortgage on the farm I had sold for \$3,000, and I owe debts to the amount of \$2,000, how much would I be worth? Why, I would be worth precisely the amount of \$3,000, and no more. And yet this amendment and the argument of my friend would make me pay taxes on \$8,000. Now, I say this is all wrong in principle, in my humble judgment. But gentlemen have said a man should pay taxes on the property he possesses, because he is protected. I say so, too, sir; but I do not think that in either of those cases I own property to the amount of \$8,000 to be protected at all, sir. In the case last cited, sir, I own in all the amount of \$3,000, which is protected; and I may struggle along to take care of the three or five thousand dollars for my rich neighbor. That is all there is of it. Is it not enough for the active business men of the country to struggle along on the usual system of paying interest without paying taxes upon the interest? It strikes me so, sir. Now, gentlemen have said here that some safeguard should be thrown around these matters. I say, sir, the laws should be so framed that they could reach the property of the country. I would say so, if we can do it. And the gentleman who last occupied the

floor [Mr. Alvord] has instanced two or three cases where men have got rid of their taxes. I should characterize those cases, sir, as downright perjury, and nothing more. Is there any man who can say, by just placing on his ledger, that a certain mortgage belongs to his daughter merely to escape taxation—that he does not own the property, and therefore, can go and swear that he does not own the property? You can bring him up into Genesee county, and I will venture to say that I could convict him of perjury before a jury of his countrymen, if the facts stated by the gentleman from Onondaga [Mr. Alvord] are correct. Take a case where a man signs an official bond where no particular liability has been fixed upon that bond; under the present law the assessors are not obliged to take his affidavit that he has not got any property, but they can examine him orally on the subject. And where is the assessor who would not be indicted for dereliction of duty if he allowed any such deductions from men's personal property? You may multiply charges if you choose; and I do not object to that under the present Constitution. Because, under the present law circumstances have arisen where men have committed the crime of perjury. That will be committed under any law. But this case is one to be considered with some seriousness, whether in the organic law of our State we shall make such an assessment law, that shall continue the law for the next ten or twenty years, if the Constitution happens to be adopted. Rather make it, sir, a matter of legislation by which the people can be heard on this question; and if an erroneous assessment law shall be adopted, or one that is regarded as perfect in itself, and it shall turn out to be a law that does not reach the case, the Legislature would have power over that law to repeal or amend. But here we fix it without any hope of relief whatever. Is it wise to do so? If it is, gentlemen might frame a law by which we can reach the property of the country, and make that property liable to the taxation of the country; and I for one am willing to unite with them in doing so. But the amendment offered, in my judgment, will not reach it. Then, again, sir, if this amendment were to be adopted, I do not see any necessity, really, of making a man swear in reference to his real estate, because that cannot be hid. Personal property may be covered up, but a man's real estate cannot. Let him give a list of his property, specifying the number of lots, etc. In the same way why not swear to the value of it? I will tell you why. The man who has got a conscience, and believes in the solemnity of an oath, would have to pay the taxation under such circumstances as that. If you allow men to make their own assessment, it is well enough to a certain extent. What would you do in the case of a man who chose to make it appear that his real estate was less than it is? Why, sir, let the assessors examine and make their own estimate as to the value of that real estate, so that they equalize between them and their neighbors. Because, mark you, it does not make any difference in point of fact, if there is a given sum to be raised by taxation, whether my property shall be rated at \$10,000 or \$20,000, provided my

neighbors are taxed in the same ratio; the result will be precisely the same; but, if you allow these men to make this kind of assessment upon one man's property by which it will be raised while another man's will be sworn down, instead of reaching the difficulty, we would have greater difficulties than we have had under the present law. But, on the subject of personal property, I conceive there is some difficulty about it, for the reason that the assessor cannot see the personal property. But in that case the object can be reached by just allowing a man to make a custom-house affidavit on the subject. I would allow assessors to examine men where there are suspicions, orally, on the subject, and to fix the assessment as it should be, after a fair examination of him and from their knowledge of the man's affairs. But, it seems to me, after all, the great difficulty is in the execution of the law we already have. The law requires assessors at the present day to assess real estate at its present cash value. I would not myself accept the office of assessor at the present day because I do not believe that a man can discharge that duty honestly and fairly. By reason of the custom of the country, the action of the neighboring towns and counties in the State, it becomes an absolute necessity that there should be some equalization. Therefore, if you put down the property to less than one-half its value in the real estate of the country it would make no difference, provided it was uniform throughout the State and the country, because it would amount to the same thing so far as taxation was concerned. But the difficulty is, one party makes it higher and the other puts it down, so that there is a strife between counties and assessors to see how low they can put it down for the purpose of avoiding taxation. If gentlemen can reach the point by which this can be avoided and can reach the personal property that now pays no tax whatever, we shall have gained an end that we have not gained under the present law. But, if we fix anything that is inflexible in the organic law, and if it turns out not to work as we anticipated, we have got to submit to it for the next twenty years, unless it is repealed by the Legislature in the way prescribed. The question is whether or not we can fix it here. If we can, I will unite with members in fixing it. But I will not unite in an amendment by which you can make no deduction whatever on account of indebtedness, for I believe it is worse in that case than at the present day. So far as our taxes generally are concerned, I have a word or two to say. I was one of those hopeful men during the rebellion. I believed in my soul that this government of ours was to be protected and defended and saved from disseverment, and I believed that our Heavenly Father, who had carried us through the war of the Revolution, would carry us through those dark days through which we have passed. In passing through that struggle we incurred taxation for ourselves and our children. But who would not endure that rather than have it come to pass in his lifetime that this government, the land of Washington, the United States of America, should be forcibly dissevered by the act of a portion of the people of the Union. If that was possible, we might bid farewell to liberty in this country.

The oppressed of other nations, too, might bid it farewell, because it would be said that in America the experiment of self-government had been tried, and it had been found that men was incapable of it. America, sir, had passed through all sorts of difficulties, through poverty, through wars with foreign nations, and had always been brought out triumphantly. But we had never passed through a civil war, and if we had failed, then it might have been said that self-government was a failure, for it had been tried in America, under the most favorable auspices, and had failed. But, sir, we have passed through that trial, and I trust and hope the time is not far distant when this country of ours will be once more one country — not only one in territory, but one in feeling and sentiment, so far as we can have it, in view of the various possessions of our country. Before this war commenced, we had an institution in our midst that all good men desired to get rid of. In former days most of the men that took slavery to their bosoms believed it to be a curse to themselves, but knew not how to get rid of it. Such were our Clays, our Websters, and other statesmen in the United States, but they could not devise any means whatever to get rid of slavery, and they allowed themselves to go on under it. And yet the overruling hand of Providence, in the trials we passed through, has carried us through triumphantly, and slavery is no more forever in America. But who, the most radical or the most conservative, could have believed for a moment, that the chains could be stricken from the slave at once, and that the South or the North would give its consent to it? And yet it has been done; and it is working along peacefully, although not as smoothly as could be wished. Yet I think, as I said through the war, that the same God that carried us through that trial will finally unite this nation once more as in the past. And when that is done, sir, the whole people, North and South, will take hold of the indebtedness of this country and wipe it out in a comparatively short time. We know that a divided nation without a navy, without an army, without money in the treasury at its commencement, carried on that war and have gone through with it, and would have turned out, every man and every woman, too, to fight this war for the Union. The same power will carry them on to pay off the indebtedness of the country. The men of the South, whatever we may say of them on other subjects, are brave men; we found them to be so; and when they shall be united in support of the old government under the Constitution of the United States, I believe all of us together will go on and pay off this debt; and we shall not feel it, after all, very much. I believe it, and I trust and hope the time is not far distant when this will take place. If, perchance, after having passed through this trial of ours, a foreign nation should undertake to trample upon our rights, when they reflect that our armies are once more combined under one flag, under one nationality, they will take the sober second thought on that subject, and in my humble judgment we may calculate that we will go on, for a long time to come, in peace and harmony with foreign nations, because they have seen what has already taken place with

amazement. In the last few years, in the midst of that struggle, the hammer and mallet were dropped through all Europe. What startled them? They heard of the iron-clads, and they said, "What is this that comes across the Atlantic?" Why, sir, the very first conflict, that between the Merrimac and the "little cheese-box"—the Monitor—overturned all naval warfare, substantially. That was worked out under our own flag and in our own country. I say we may expect to have peace for long, long years to come; and I believe and hope and pray too, that the seats which are vacant now at Washington will soon be filled there by loyal, Union-loving men that love their country, are ready to fight for their country and their flag, now and at all times, when it shall be assailed by any foe, foreign or domestic.

MR. HAND—I am in favor of the amendment of the gentleman from Chautauqua [Mr. A. F. Allen]. I think the principle is correct. It needs it, or something involving the same principle, to be put into operation. We have a burden of debt upon us, such as no nation ever stood under during the history of civilization; and the complaint comes up, in regard to this inequality of taxation. I know, from the place where I reside, and it is said to be so everywhere, that personal property escapes taxation, that it comes upon labor, that it comes upon the agricultural population, that it comes upon the mechanics. There is no injustice in the taxation of property, wherever you find it. The poor man who borrows the capital with which he does business, in the case supposed by the gentleman from Genesee [Mr. Wakeman], is not wronged because that capital is taxed. The man is not oppressed himself. It is not the man, it is not his reputation, it is not his character, it is not his good name that is taxed, but the \$15,000 with which he does business. The property should be taxed wherever you find it; there is no other legitimate rule of doing business. This man borrows \$15,000 because he has credit. Now, every man who carries on a business of any kind, no matter whether it be mercantile, or mechanical, or professional business, must know that his profits must be sufficient to pay the risks and expenses of the business, and the man who purchases his stock of goods and offers them to his customers, in fixing his profits, fixes them so as to pay the interest of the money, and the taxation, and all the liabilities that are properly to be paid by the profits. That is the rule of business. Every professional man, when he makes his charges, calculates upon his losses by bad debts—upon the perils of credit. Every merchant who does a credit business calculates the perils of credit, with other risks, so that when losses are sustained, he may be able to cover those losses by the profits of his business. So of the man who has no capital of his own; he estimates all the incidents and risks pertaining to capital, viz: insurance, interest, taxes, and every liability of the money that he borrows, so as to judge whether he may, with borrowed capital, carry on that business successfully. The man who borrows \$15,000 not only arranges his profits so as to cover the interest on it, but likewise

every liability to which his particular business is incident, including the taxes that are to be paid on it. Therefore, there is no injustice whatever in making him pay taxes on the \$15,000 he has borrowed. The man who does business on his own capital, who owns his \$15,000, pays taxes upon it. Why should one pay the tax and not the other? It is the misfortune of that young man not to own the property but to pay interest on it, on which the other man pays no interest, who has accumulated the property, and which is the accumulation of his industry ever since he started in life. This young man labors under that misfortune, as every man does in early life who has to construct his own fortune and who at first labors under the burden of poverty. It is not the man or his character that is taxed. It is the money or property he has in his possession. That property must help to support the government which protects it. He has it in his possession, and pays taxes upon it; in calculating his profits, he makes the profits pay the taxes, or else he is a poor financier. There is no ground whatever for the claim that there is any injustice done to that young man. That property should be taxed, and it is taxed. Now, a man purchases a farm for which he agrees to pay \$5,000. He has just \$2,000 in hand, and he gives his bond and mortgage for \$3,000. Is it not proper that that land should be taxed where the assessor finds it? What sense in subtracting the \$3,000, he owes on it? Suppose the owner of the mortgage is a non-resident, living perhaps in another State. I have known such instances in my own town, the mortgagees living across the line in Pennsylvania. He holds these mortgages to the amount of many thousand dollars. Now, if the occupant of the land is relieved from taxation in such cases, where is government to look for its just dues? The true rule is to tax property, personal or real where you find it—looking to the possessor for what is due to the government, and holding the property itself liable. This plan really works no injustice to any party. A man who takes property into his hand, whether he borrows the money or not, assumes all the liabilities, and should do it, and fix the profits of his business to meet them all. That is a plain statement of the case, and it is as it should be. You cannot lock up a man's debts and liabilities—and on pretense of these, release real property before you—especially so when we recollect that it is under pretense of these liabilities that the grossest frauds are perpetrated and the wealthiest capitalists escape taxation. All the trouble and injustice arises from these pretended debts that a man owes. These are some of the schemes that are carried on in the place where I reside, and in every other place in the State of New York. They are not new dodges of which I speak, but from year to year have become better organized schemes of villainy. Some of the plans adopted are curious illustrations of the ingenuity of the precious scamps. For example, a man expecting a visit from the assessor telegraphs to his New York correspondent to purchase for him \$50,000 in United States bonds. This he does three days before the anticipated visit of the assessor. The assessor comes around, and he shows him the

answer to his dispatch: "Sir, I have purchased \$50,000 seven-thirties, agreeably to your order." He tells the assessor that this liability is equal in amount to his taxable property. The officer leaves him satisfied. The capitalist immediately informs the New York correspondent that he has changed his mind, and he may sell the seven-thirties again.

Mr. E. BROOKS—I thought our seven-thirties were taxable.

Mr. HAND—Then five-twentieths. He writes: "I want to know what the difference is between the prices now and the prices at which you purchased them. If they have fallen in value, I will make that good to you." According to our present laws and the practice of our assessors under it, here is a gross fraud, and there is no way of getting around it and securing to the government its just dues. Another case: A man becomes security for a neighbor in the State of Pennsylvania. That neighbor has purchased a piece of property from a friend of his, and to secure the balance of purchase-money, mortgages it in the sum of \$50,000, and in other ways makes it perfectly secure. Our man who loves to be in debt when it suits his purpose gives his note as collateral security for the payment of this purchase-money already abundantly secured. In this he incurs no real liability, but he can say to the assessor, "I am liable for \$50,000 in Scranton," for example, "there is a debt against me that I will have to pay." These and the thousand other petty tricks must be met by the most stringent provisions—taxing property where you find it and resorting to methods to ascertain its existence, similar to those we use to ascertain the truth in other matters. There is no other rule to do justice between man and man; and the man who uses the property of another, as I said before, uses it because he thinks he can make the property pay a good profit. There is no use in investing that property and holding the government responsible which is instituted for its protection, and for which protection the courts are instituted, with all the expensive machinery by which justice is administered between man and man. The people are taxed for this. The gentleman stated here to-day that it was very wrong to pay income taxes, although that does not properly come within the range of this discussion. That, I think, is perfectly right. There is many a man who has laid down his life in fighting for our country during the late perilous years of war she has just passed through, and left his family not a yearly and fixed income, but the uncertain products of a little farm he has left behind. A neighbor who either lacked patriotism or courage or some other quality, stayed at home. He has certain means of earning just three times the amount of that poor widow's income from her farm. Her yearly income is uncertain, it comes from a little farm heavily taxed as all real estate must necessarily be taxed. Now, to say, that the man who has failed to plead the cause of his country should not be taxed, while we tax the poor widow is unjust. It seems to me the man who is prosperous should help support the government, though he does not possess real estate. I fully appreciate

all the difficulties of our condition with the great burden of debt upon us. But it must be paid, every cent; therefore, the machinery must be very perfect that ascertains and taxes the property of the State. Everything must be carried on, not only honestly and justly, but so as to unveil and bring out all the property in the country; every dollar must bear its just amount of burden. We shall then be able to meet our liabilities and pay the debts due by her to the last farthing. I hope something of this kind will be carried into operation. I understand, in the State of Connecticut, the tax payer is required to make a written statement of his affairs; these returns, verified by oath, are made in the manner that our government assessor requires; and perhaps this is the case in some other States. A gentleman near me says it is so in Vermont likewise. After making the return of his property he is called before the assessor; the assessor asks him such questions as he deems necessary. He says, "I owe fifty thousand dollars to such a man, I owe six thousand dollars to such a man, I want this subtracted." If the assessor has any doubt, he calls the man's creditors before him and questions them, etc., etc. If I had my way I would have it so that a man can be brought before the assessor to find out whether the debts he says he owes are *bona fide*. If he owes ten thousand dollars let the assessor put it down to the creditor in his assessment, so that it is not lost to the government. He goes on to cross-examine him and inquire into his affairs; if he pretends he owes ten thousand dollars to his wife then his wife must have an assessment of ten thousand dollars made against her. The officer of the government calls upon the property where it is found to pay the taxes it owes the government. Something of that kind is necessary to bring out and show up all these frauds. It wants an honest administration of the assessment laws or they will fail to do justice however wisely enacted. Under our present laws the paltry pay of the assessor prevents a faithful performance of his labor. Will not some men perform this business faithfully? If they will give me a liberal compensation for the labor and such a law as I suggest I would undertake to find out the property of men. I would at least guarantee a great change in this matter. It is a want of faithfulness; they simply take the word of the man. I would make the assessor in some way liable, enforced by penalties for failure of duty; the Legislature can pass a law of this kind. I would make a liability that should be effective. I would make it compulsory upon him. It should be his duty that he should report to some authority and be responsible in heavy bonds for failure, so that he could not escape the responsibility of the non-performance of that duty. I think we need something different in the law. It may be doubtful whether it is a proper subject of action in this Convention except so far as we direct the Legislature what to do. I think something of the kind introduced by my friend from Chautauqua [Mr. A. F. Allen] is about the sort of thing, not to put into the Constitution but to require of the Legislature when they shall meet to take action on the subject.

Mr. MAGEE—If it would be in order I wish

to withdraw the amendment offered last evening to the article on taxation proposed by my friend from Chautauqua [Mr. A. F. Allen]. I make this motion to enable him to present a substitute for the original, as I think it is an improvement, with the intention of renewing this proposition at the proper time.

No action having been taken on the amendment it was withdrawn.

Mr. M. I. TOWNSEND—I am in favor of the principle embodied in the proposition of the gentleman from Chautauqua [Mr. A. F. Allen.] I believe, for one, that there is no business in which this Convention can engage more vital to the interests of the State, or to the peace of the community in which we live. As is now conceded, I think, by every gentleman upon this floor, we have at least five thousand millions of property in the State of New York, and our assessment rolls show about sixteen hundred millions as taxable. We came here under circumstances such as call for a very careful consideration not only of the burdens upon the people of the State, but of the mode in which these burdens are to be borne. The debt of the State, our proper debt, and with which alone we are concerned (for I contend that this Convention has nothing to do with the national debt), is a burden upon the property of our people. The property of the State seems to be sixteen hundred millions. We know that the property of this State is more than five thousand millions. I wish these burdens to rest upon the whole property of the State, upon all the property in the hands of all men. I do not wish to speak harshly of the state of things in my own community, but I find it difficult to conceive of any civilized organization where the burdens of government rest more unequally than they do in the State of New York. We may not feel it; the gentlemen of this Convention may not feel it; "their withers may not be wrung," yet the withers of those struggling for existence in the State of New York are wrung by the injustice done by our system of taxation. Sir, the real estate of the State of New York, and a few corporations, practically pay the whole of the taxes imposed by State and local authority, while scarce one-fifth of our property is represented in the real estate and in the capital of those corporations. A man marries; the Lord blesses him with a little family; he finds it is necessary to have a shelter to cover his head. The tax gatherer finds him out and he has to pay the utmost farthing. A man fails to assume these social obligations; he enacts the skillful man of finance; he puts his earnings into personal property from year to year, and from decade to decade. He does not pay one dollar toward the burdens of the State. Here is one man with his thousand dollars invested in lands, paying taxes upon it every year. The man who has ten thousand dollars in personal property does not pay one cent. As the law now stands, the practical operation of it is this: A man buys a piece of property that costs two thousand dollars; he is worth one thousand dollars; he pays that thousand dollars toward the land. He has a neighbor who is also worth a thousand dollars, but more adroit and cunning

than the man whose necessities compel him to buy land, he lends his thousand dollars to the man who owns the land. The land is taxed for two thousand dollars; the man who loaned the thousand dollars does not pay a penny. The injustice of this is most apparent. You can stretch out your hands and on every side put them upon men whom you know are worth ten, twenty, thirty, forty thousand dollars, or it may be, a quarter of a million, in property, which should be taxed; but when you go to the tax list to see how they are rated—it is by the mercy of Providence that you find them there at all, and if you find them there at all you will not find them rated for one-tenth of what every man knows they really possess. Attempts have been made to have this wrong corrected by the Legislature, but in vain, and if, as has been suggested by my friend from Genesee [Mr. Wakeman], this matter should be remitted to the Legislature, we shall look in vain for relief. This wrong has been urged upon the attention of that body from year to year, from session to session; but nothing has been done, and nothing ever will be done in that quarter. If the Convention has not the magnanimity and determination to take hold of this question, this injustice will go on increasing indefinitely, and from year to year, and the wrong will become more apparent and more intolerable. I have spoken of corporations that are now paying taxes; but yet these same corporations do not come to the Legislature with complaints. What is the reason they do not? Corporations are governed by men; the injustice of taxation never reaches the stockholders or the officers of the banks in their individual capacity. They have larger interest in personal property outside the bank, than is represented by their stock on the bank books, although they know and feel that the bank itself is dealt with unjustly, the officer of the bank is more affected beneficially in his pocket by the injustice done to others than he is affected injuriously in the disproportionate tax upon the little stock he happens to own in the corporation. Although this injustice is done every year to corporations of the State, the whole influence of these corporations is brought to bear upon the Legislature whenever it comes together, to prevent any change in the system. I know it may require an effort on the part of this Convention to inaugurate a different state of things. There are many here blessed with this world's goods, and it will require a little courage, and a little self-denial on our part. If a man can dig on the battle-field for his country it seems glorious to all the world. But it is a no less honorable act to consent to pay our just share of the taxes necessary to support one's government and sustain its honor untarnished. Now, I wish for a moment to refer to the national taxation. It is found to be true, I think, as was substantially suggested by the gentleman from New York [Mr. Pierrepont], that in the arrangement of these burdens they are always made to bear most heavily upon those who are the least prosperous—upon those who are not able to appear before congressional committees and look after their interests there. We have found that in the levying of taxes by our national Congress the exceedingly

prosperous are very likely to be exempted from any burdens whatever. We find that, in levying internal taxes, Congress has selected out the most prosperous interests in the country and exempted them from paying any taxes whatever under the internal revenue laws. That is the tendency of the times, and it is that of which the people complain more than anything else. The people of this country are willing, the people of this State are willing, to stand up manfully and bear any burden necessary to be borne by the nation to sustain its life and redeem its plighted faith. But it can but be considered a hardship for one to be compelled to devote his entire pittance to the support of the State or nation while his rich neighbor scarce pays a dollar. I hope we shall be willing to inaugurate the system and adopt the plan prefigured in the report of the gentleman from Chautauqua [Mr. A. F. Allen]. The gentleman from Genesee [Mr. Wakeman] seemed to think it was exceedingly hard that the man who run in debt for five thousand dollars' worth of personal property should have to pay a tax upon that property. Why, if the same man runs in debt for five thousand dollars' worth of real estate he has always had to pay taxes upon it, and nobody has groaned over it, and nobody has pitied him. He should not have been unwise enough, unpatriotic enough to own a home for his family; "he can pay it well enough." Why should not the man who owns personal estate be liable to the same inconveniences? Here is a merchant in the city who owns a store of goods. He puts fifty thousand dollars' worth of property in it: every dollar of that property he has bought on credit. Here are police expenditures, expenditures designed to prevent fire, expenses for the various departments of the government of this State and of the city for guarding him and his property and taking care that the robber does not break in and steal or destroy his fifty thousand dollars' worth of property, and yet, forsooth, he is not to pay one dollar for all this. We can find five hundred such cases in this city and ten thousand in New York. The goods, perhaps were purchased in Boston, and yet the little landholders clustered about the suburbs of this city or the city of New York, must be taxed to meet all these burdens and the local merchant who bought the goods and is secured in their enjoyment, and the Boston merchant who sold the goods pays not one dollar. If the goods belong to an Albany merchant, the Albany merchant should be taxed for them. If they belong to a Boston vender the Boston vender should pay the tax. Sir God has made no distinction between the rights of men who own personal property, and the rights of men who own real property. There is no ground for such a distinction as is made by our laws. The men who own personal property it is well known are more prosperous than the men who own real estate. Their prosperity is so great that they can afford to go to the Legislature and have agents to look after their interests there. But the man whose little all is invested in the soil has no one to represent his interests, and the grossest injustice is done him. But I hope this Convention will take more equitable ground. I hope we shall see to it that the burdens which the people of the State are com-

pelled to bear shall rest upon the property of the State, and upon all the property in the State. It is said that there are certain localities where property is kept in the State while its owner resides within some other jurisdiction. Should not such owners pay for the protection which we furnish to their property? Suppose a man is doing business in New York, while he resides in Jersey City, or in Elizabeth, or in Stamford, Connecticut. We pay for police, we pay for fire expenses, we pay for municipal expenses of the State, where his property is stored; shall his property be exempt from paying any share of these burdens while the man who sees fit to reside within our State and give his life and his all for the State, is compelled to bear the sum total of these burdens? I believe, as I said in the outset, that it is difficult to conceive of a system of distributing the burdens of a civilized community so that it would operate more gross injustice than the actual system of taxation as it now exists among us. This system is not only grossly unjust, but it is demoralizing to the last degree. Your assessor takes up the assessment books with the perfect consciousness that do what he will his neighbor who owns land is to be robbed. His neighbor knows that, and the consequence is, that the assessment of real estate never tells the truth. Real estate is not assessed truthfully and thus a general demoralization ensues. I insist that a people cannot prosper whose officers either work or tell lies. There is not an assessment roll now made out in this State that does not both tell and work lies. I would put the system of taxation upon such a basis that the assessment rolls should tell the truth. The gentleman from Genesee [Mr. Wakeman] stated a difficulty that I think does not exist. He seems to think that you are making the oath of the property holder take the place of an official assessment. The proposition of the gentleman from Chautauqua [Mr. A. F. Allen] does not make the oath of the property holder final, but leaves the assessor to add to the property disclosed such amount as in his judgment shall seem proper. An assessor often acts for thickly settled districts ten miles square, or he may be called to act for a district in the city of New York. We know that he cannot tell the actual amount of property owned by any considerable number of persons in his district. We should authorize him to ask the man who owns the land to say under oath what he believes to be its value. Suppose the assessor has returns made under oath as to the estimated value of lands lying adjacent. Suppose that one of these returns greatly under-estimates the value of a portion of these lands—the assessor has before him the opinion of nine honest men by which to aid his own judgment in fixing the true value upon all the lands in question. The return of personal property to the assessor will no more conclude the assessor than will the return of real estate. I have said in substance that I have long felt that of all the systems of injustice that have existed in the State of New York, our tax system has been the most glaring; I hope to see the evil remedied. I do not believe the Legislature will ever make the change, because I believe the influence of the men whose interest it is to have

this abuse perpetuated will control that body. I do not believe that influence will control this body. Therefore, as the question is before this body, I hope we shall take hold of it, and do what we believe we should do in the distribution of the burdens of the State among her citizens. Why is it wrong for us to dispose of this question? We have been three weeks considering questions kindred to this. This is the cap-stone of them all. What is the use of the column of propositions which we have been building up here, if taxation does not crown them as a capital? And why shrink away when taxation comes? Why shrink at this exigency of our labors? Certainly the Convention will not fail to do what seems to them to be so clearly just, merely because adroit financiers have hitherto, by skillful arrangements, so fixed their property as not to pay a dollar of tax, or bear any share of the public burden! We should make our system complete because all we have done in regard to finance goes for nothing, except that we provide some mode in which the burdens that we have found resting upon the people can be properly distributed among the people.

Mr. VERPLANCK—I do not propose to discuss the proposition presented by the gentleman from Chautauqua [Mr. A. F. Allen]. All agree that taxes are unequal; that, although real estate is not taxed to its full value, the greater part of personal property is not taxed at all. The important question is, whether the amendment of the gentleman from Chautauqua will correct the evil. I do not propose to debate that question. Unless some better plan is offered I suppose the Convention will adopt it. I rise more particularly to call the attention of the committee to the amendment offered by the gentleman from Schuyler [Mr. Magee] which he withdrew. But as he promised to renew it, and as I expect to be absent from this Convention for some time after to-morrow, the committee will pardon me for saying a few words in reference to this amendment. It proposes to put an extra tax of two per cent on banks and insurance companies. In reference to banks it will be recollected that their property is fully taxed, and the property of individuals if in banks, is fully taxed under the present mode of taxation. But I rise more particularly with reference to insurance companies. In the year 1866—and I wish to call the attention of the committee to this because it is important—the insurance companies of the country lost over \$15,000,000—twenty per cent upon their whole capital, which is supposed to be about \$75,000,000. No man takes up his insurance policy without trembling for fear the company may not be able to respond if his property is destroyed. Insurance companies are now taxed by the general government. First for stamps, which amount to one per cent of their dividends; and their dividends are taxed five per cent, making six per cent upon their dividends. In addition there is a tax of one and one-half per cent by the general government upon the gross receipts of insurance companies. It will be recollected by gentlemen who were in the Legislature last year that many of these companies on account of these losses asked a reduction of the amount of their

capital. I call the attention of the committee to this because when this question is renewed I shall not be here. Whatever may be done in reference to the banks it certainly would be very unjust and improper, not only to insurance companies but every man insured, to put an additional tax upon these companies.

Mr. SPENCER—I offer the following amendment:

"The Legislature may also provide that every male person entitled to the right of suffrage shall pay an annual personal tax of at least one dollar, and for the exclusion from the exercise of suffrage of every person neglecting or refusing to pay such tax."

I am in favor of the object which is sought to be secured by the proposition of the gentleman from Chautauqua [Mr. A. F. Allen], but I am greatly apprehensive it will be found exceedingly difficult to frame a proposition as a part of the Constitution which shall be sufficient to meet all the exigencies of the future; and the omission which I have sought to supply by the amendment is one of these possible exigencies. The proposition has been laid down here generally, by all who have spoken on the subject, that taxation is for the protection of property, and that it must have been assumed that this was the end of the entire purpose of taxation. Now, this is not true. It is as much for the protection of the person as for the protection of property. Indeed, the security of the person is the first object of the government, and that of property is secondary entirely. Now, it seems to me that if we are to express the principle of taxation we should at least express it sufficiently broad to embrace the principle which is contained in the amendment I have proposed. I have endeavored in that proposition to secure the payment of such a tax. That security rests in depriving the person who shall fail, or neglect, or refuse to pay his tax of the right of suffrage. There are persons in every community upon whom no tax can be enforced; but any person who prizes the right of suffrage will be undoubtedly willing to pay his tax, at least a small tax, for the protection of his person and have the exercise of the right of suffrage, and by which, through this instrument, he secures his protection.

Mr. McDONALD—Would an amendment be now in order?

The CHAIRMAN—There being two amendments pending, a further amendment is not in order.

Mr. McDONALD—I would suggest to the gentleman from Steuben [Mr. Spencer] that the object which he wishes to accomplish can be accomplished in this way, by adding instead of what he proposes: "Provided, however, That this shall not in any way affect the right of the Legislature to impose any direct or indirect tax," and keep this section entirely for direct taxation.

Mr. SPENCER—I prefer to leave the proposition in its present form for the consideration of the committee, although I have no great choice about it.

Mr. LAPHAM—I am opposed to the amendment of the gentleman from Steuben [Mr. Spencer] and for this reason: It will impair very

greatly, in my judgment, the value of the provisions of the article in relation to suffrage, which we have already adopted. No one can fail to see that if the right to vote is made dependent upon the payment of a dollar, a large class of the electors are thrown into the hands of designing men who will, under guises which can never be detected, furnish money for the purpose of controlling their suffrage. I hope that idea will not be entertained for a moment; it is unjust, I may say, to make the right of suffrage dependent upon any contribution of that kind, and even if it were not unjust it is so extremely dangerous that I trust the idea will not be entertained. The amendment of the gentleman from Chautauqua [Mr. A. F. Allen] only adds to the provisions of the Constitution as they now are, as I understand it, two additional provisions. One is prohibiting a person liable to taxation from deducting the amount of his debts from the amount of his personal property; the other is to require that every tax payer shall make a return to the assessor upon oath. I am in favor of both of those provisions. The amendment of the gentleman, as I understand, simply requires the Legislature at its next session, after the adoption of this Constitution, to frame a proper statute to secure those ends. In other words to amend the present provisions of the Revised Statutes, which were referred to by the gentleman from New York last night, by adding thereto the requirement that a tax payer shall report on oath his property, and by taking out of the statute the provision which enables the holder of personal property to deduct his debts from the balance.

Mr. RUMSEY—It need hardly be stated that the tax laws, as they are now made and administered, operate upon a very large class of the community unjustly, and that they put upon the small farmer and dealer a greater tax than the proportion he should bear. It is undoubtedly true that not one-half—I think I may say one-quarter—of the property real and personal in this State is reached by the assessor. Now, if this can be remedied, it is, beyond all question, our duty to furnish that remedy. It seems hard to adopt the principle by which a man who has property in his possession shall be taxed upon the whole of that property while he owes for and does not in truth really own any part of it. Yet all men know that the most prolific source of the fraud and perjury perpetrated in our tax list arises from the fact that the party whose property is about to be assessed alleges he is indebted. There is no manner of ascertaining the truth or the untruth of the statement in regard to these debts. He swears generally to them, and there are no means of contradicting him. It is right, in my judgment, that every fair and every honest debt should be deducted from the actual valuation of the property in the possession of every individual. But it should be done in such a way as to enable the assessor or any other man who shall see fit to trace out and ascertain the fact whether that statement of indebtedness is correct or not, and to have the means before him by which he can do so. I shall most assuredly vote for this amendment of the gentleman from Chautauqua [Mr. A. F. Allen],

if it shall be placed in such a situation as shall do justice to all parties in the assessment of the property which is to be subject to taxation. Now, if we can adopt any provisions by which we shall be able to learn the truth or the untruth of the statements made to the assessors in regard to the actual valuation of the property of every one fairly subject to taxation, we shall have gone far, not only to do justice to men who have this property in charge for which they are indebted, but also to reach a large amount of property of which the owners thereafter will be very careful how they attempt to elude the requirements of the law. I propose, when the proper time arrives, to offer an amendment which I hold in my hand, and which, in my judgment, will bring us as near to our object as we can get, to add after the words "that no deduction shall be made for any debts which are due from the party who is to be assessed," the following: "except such debts as in the sworn statement hereinafter mentioned shall be particularly set out, with the name of the creditor, the form in which the debt exists, the consideration thereof, and when the same will become due." If the person to be assessed is willing to make such a statement of his indebtedness it places it within the reach of every individual who shall see fit, to trace out and ascertain whether that statement be true. It seems to me, with this provision in the section, we may safely trust the assessors, and rely upon it that the person to be assessed will not give other than the facts in the statement he is to furnish under oath, for we will have the means of tracing out its truth or falsity upon the face of his statement.

Mr. MURPHY—I would suggest to the gentleman [Mr. Rumsey] that there is a great imperfection in the amendment he proposes to offer, arising from the fact that a large amount of the property in every community in the State is mortgaged to individuals who reside in Connecticut, New Jersey, and other States where the rate of interest is low, by which reason they are induced to come to New York and loan their moneys. I suppose there is in my own city alone, probably ten or twenty millions of dollars thus loaned by foreign residents. In the framing of this resolution, that amount of property would escape taxation altogether; for, being deducted from the debt, it would not be taxable against the owner of the property, the creditor not residing in the city, and it could not be reached as personal property.

Mr. RUMSEY—I think that difficulty can be very readily obviated, for the provision introduced by the gentleman from Chautauqua [Mr. A. F. Allen] provides for the taxation of debts due non-residents wherever they may be found; and when those non-resident debts are ascertained, the tax may be imposed upon them, and the Legislature has the power to enforce the payment of that tax when it shall be thus assessed.

Mr. MURPHY—Then you will drive that capital from the State. If you undertake to tax that capital through the medium of the mortgage by requiring the mortgagor to pay the amount of the taxes, or deduct it from the interest which the mortgagee is to receive, your foreign mortgagees will not come here with his money.

Mr. RUMSEY—That may be true, but if he does, he must pay his tax. It is so with regard to every particle of personal property that comes to this State owned by residents of other States. That is no reason why that property should escape taxation, more than the other property in the State which is protected by its laws.

Mr. SPENCER—The suggestion of the gentleman from Ontario [Mr. McDonald] seems to have some force; therefore, I will accept his suggestion.

The SECRETARY proceeded to read the amendment of Mr. McDonald as follows:

Add, "Provided, however, That this shall not in any way affect the right of the Legislature to impose any direct or indirect tax."

Mr. CHURCH—I hope this amendment will not pass. I hope no authority will be given for the Legislature to impose indirect taxes under express authority in the Constitution.

Mr. TILDEN—Or poll-taxes?

Mr. CHURCH—Or poll-taxes either. It will be borne in mind that the United States government have occupied the whole field of indirect taxation. I think it would produce great mischief, if not a conflict between the national government and the State government, if the latter should go into the field of indirect taxation. Therefore I hope no such amendment will be adopted.

Mr. TILDEN—I think the Convention will not need much discussion to convince it that a poll-tax, that is to say, a *per capita* tax that is to be imposed upon individuals without reference to their means, their property or their income, is not the tax that should be adopted by the people of this State. It is contrary to our habits and practice for a long time past.

Mr. McDONALD—The question presented by this amendment, as I understand it, is not of giving any power to the Legislature; but is whether we will take it away. There has been no discussion here with regard to the propriety of direct or indirect taxation or poll-taxes. I, for one, am not sufficiently informed to determine the propriety of taking away from the Legislature the right to levy either poll or indirect taxes for twenty years to come. I propose to leave this matter just where it is now, and let the Legislature have the power. I do not think, while the United States government is levying indirect taxes, it is wise for the State of New York to commence levying them. I am not ready to decide this question. I understand Pennsylvania levies by indirect taxation about three-fourths of her tax, and I have heard the Comptroller of this State express the opinion that he thought they levied in a very good way.

Mr. CHURCH—I will say of the present Comptroller of this State, that he is of the opinion we should insert a provision in the Constitution prohibiting indirect taxation, for the reason I have just stated. He has expressed his opinion to me several times. I heard him speak about the Pennsylvania mode of taxation.

Mr. McDONALD—I have heard him speak favorably of the mode of taxation in Pennsylvania; it may be because of reasons peculiar to that State. I do not know whether it is adapted to that State or not. I simply say this, and this is all I mean.

Mr. OOKE—I would ask the gentleman who moved this amendment to point out the provision in the substitute of the gentleman from Chautauque [Mr. A. F. Allen] that would prevent a *per capita* tax.

Mr. McDONALD—I supposed it did. I supposed it did prevent a *per capita* tax.

Mr. OOKE—I have not read it critically, but I have no recollection of any such provision.

Mr. McDONALD—I would like to hear the amendment read.

The SECRETARY again read the amendment of Mr. A. F. Allen.

Mr. McDONALD—I understand the law says the Legislature shall provide a uniform method of taxing real and personal property. Now, having already enacted that they shall provide a uniform method of taxation, that means all taxation. If there be any doubt about it, the provision I offer removes all that doubt.

Mr. LANDON—That proposition seems to me to open the door for a tax upon our existence or subsistence. I am therefore opposed to the proposition.

Mr. ALVORD—I think the gentleman from Ontario [Mr. McDonald] did not hear this read. It is an assessment upon property in so many words; it says nothing about persons whatever—it is upon property. I trust if it is necessary, in the opinion of this committee and the Convention, that the Legislature should be restrained from imposing either a poll-tax or an indirect tax we will so write in the Constitution and not permit them to do such a thing by implication. I trust, therefore, this amendment will be lost.

The hour of six o'clock, P. M., having arrived, the PRESIDENT *pro tem.* resumed the chair, and the Convention took a recess until half-past seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at half-past seven o'clock P. M., the PRESIDENT *pro tem.*, Mr. Folger, in the chair.

The PRESIDENT *pro tem.* presented a communication from the canal commissioner of the fifth division, in reply to a resolution of the Convention, adopted September 10th.

Which was laid on the table, and ordered to be printed.

Mr. CHURCH—It will be recollected that one section of the article now under consideration in Committee of the Whole was referred to the Committee on Charities. I desire to offer a resolution that, when this article is reported to the Convention, action in the Convention shall be suspended until the section referred to this committee shall have been acted upon.

The resolution was read as follows:

Resolved, That when the article on State finances, now under consideration in the Committee of the Whole, shall be reported to the Convention, all action thereon in the Convention shall be suspended until the section in said article, which has been referred to the Committee on Charities, shall have been acted upon in a Committee of the Whole or otherwise.

Mr. ALVORD—This giving rise to debate, will it go over under the rule?

The PRESIDENT *pro tem.*—The Chair is of opinion that it relates to the order of business of the day, and is excepted from that rule which requires a resolution to go over when it gives rise to debate.

Mr. ALVORD—Then I hope it may not be adopted in its present form. I have no objection whatever to so much of the finance report as relates to this subject going over; but I am in hopes, so far as regards the balance of this report, that when it shall come into the Convention, we shall be able to go through with it. Otherwise we shall have all these things mixed up together—canals, charities, and the report of the Committee on Finances. So far as regards the connection of the report of the Committee on Finances with the canals, settle that, and leave this question as connected with charities for a settlement when we shall have taken up the report of the Committee on Charities. By general consent the other day, this question was passed over until such time as that committee should report. I trust the gentleman from Orleans [Mr. Church] will modify his resolution so as to include only that portion of his report that refers to the question of charities, leaving the other portion to come into Convention and to be acted upon in the ordinary way.

Mr. CHURCH—I hope the gentleman from Onondaga [Mr. Alvord] will withdraw this objection. The section which has been referred to the Committee on Charities is a very important section, and a section relating to the appropriation or donation of money, not only for charities but for every other purpose, including the railroad question. If we leave that section out and have the balance of the article acted on in this Convention, we shall still have to go back from the Convention upon that section, and perhaps on another section which relates somewhat to the same subject. We shall have to divide the article in Convention. My object is that when we go into Convention on that article it may be upon the whole article. There is still another reason why I am desirous that this resolution should be acted upon. I intend to ask the Convention for leave of absence for a portion of next week on account of indispensable engagements—engagements which I cannot possibly avoid. I desire of course to be present when this article is acted on in Convention. I hope my friend will withdraw his objection; and if I get back in time to take it up without the other section I shall have no objection to doing it.

Mr. ALVORD—The care and management of the canals is also to come up as a separate and distinct matter before this Convention; and I cannot see any necessity whatever of undertaking to take up the whole of this finance report when we have deliberately resolved, so far as regards the report of the Committee on Canals, that it shall be acted upon separately. I am sorry to hear that the gentleman from Orleans [Mr. Church], in common with a great many others, feels it to be his duty to be absent from his duties in this Convention; and it strikes me it would be a great deal more proper for us in this state of things, to move an adjournment until these gentlemen can all

come back, rather than to be tided along here with scarcely a quorum of this Convention for the next week or fortnight.

Mr. CHURCH—Allow me to inquire of the gentleman from Onondaga whether the report from the Committee on Canals is not in an independent committee? It is not in this Committee of the Whole.

Mr. ALVORD—It is in a different committee. That divides the report of the Committee on Canals in two separate parts, and it is proposed to divide the report of the Committee on Finances in two separate parts.

Mr. CHURCH—I want to get them together.

Mr. ALVORD—I understand that; I propose that we shall take care of that portion and not postpone it when it comes up in its regular order.

Mr. RUMSEY—I hope the resolution of the gentleman from Orleans [Mr. Church] will not be adopted, because it will place us still further in an embarrassing condition, for the reason that there was referred to the Committee on the Powers and Duties of the Legislature a very large number of remonstrances against making any appropriation of the funds of the State to sectarian charities. That committee have reported a section in the article which they reported, against the disposition of any of the funds or property of the State, almost precisely analogous to the one introduced here by the Committee on Finances, with the exception of pointing out certain charities that might be provided for by the Legislature. That section, at the instance of the gentleman from Richmond [Mr. E. Brooks], chairman of the Committee on Charities, was passed over for the purpose of being considered when the question with regard to charities should come up; so that this provision, which, in my judgment, belonged wholly to the Committee on the Powers and Duties of the Legislature, and was reported by them, stands also referred to this same Committee on Charities. Now, for the same reason that is given by the gentleman from Orleans for suspending action on this report, when it is sent back to the Convention, we are entitled and ought to ask that action on the report of the Committee on the Powers and Duties of the Legislature should be suspended until that is acted on, and the result will be that neither of these reports can be acted on until debate has been had in committee on the sections now before the Committee on Charities. There is no sort of difficulty in going on with the rest of the report of the Committee on Finances, leaving that section out, because it is not very intimately connected with the other provisions of that report.

The question being taken on the resolution, it was declared lost, on a division, by a vote of 25 to 38.

SEVERAL DELEGATES—There was no quorum voting.

Mr. KERNAN—Mr. Magee wished me to say that he is at his room; that he is not very well; but that if at any time he could aid in making a quorum he would come if I would send for him.

Mr. BECKWITH—Judge Strong is also in his room, but will come if required to make a quorum.

The question being again taken, the vote was 34 to 39—no quorum voting.

Mr. CHESBRO moved that the roll be called.

The question being taken on the motion, it was declared carried.

Mr. SEAVER—I desire, before the call of the roll, to ask leave of absence for Mr. Barto, who has been hastily called away.

The PRESIDENT *pro tem.*—The Chair is of opinion that that cannot be interpolated in a call of the Convention.

The SECRETARY proceeded to call the roll, and the following members answered to their names:

Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Axtell, Beadle, Beckwith, Bell, Bergen, Bickford, E. Brooks, E. P. Brooks, E. A. Brown, Burrill, Case, Cassidy, Champlain, Chesebro, Church, Clinton, Comstock, Cooke, Corbett, Curdis, Endress, Ferry, Flagler, Folger, Garvin, Gould, Graves, Hammond, Hand, Hardenburgh, Harris, Hitchcock, Houston, Kernan, Ketcham, Kinney, Landon, Lapham, M. H. Lawrence, Lee, Ludington, Magee, Mattice, McDonald, Merritt, Merwin, Monell, More, Murphy, Opydyke, A. J. Parker, C. E. Parker, Prindle, Reynolds, Robertson, Rumsey, Schell, Schoonmaker, Seaver, Spencer, Stratton, Tilden, M. I. Townsend, S. Townsend, Verplanck, Wakeman, Wales, Weed, Wickham, Williams, Young—77.

Mr. MORE moved that the Convention adjourn.

The question being taken on the motion, it was declared lost.

Mr. CHURCH—I would suggest that if we remain here a few moments we shall have a quorum.

After some delay,

Mr. CHURCH—I will withdraw the resolution I offered.

Mr. SCHOONMAKER moved that the Convention adjourn.

Mr. CHURCH—I demand the ayes and noes on that motion.

A sufficient number seconding the call, the ayes and noes were ordered.

The question being put, the motion was declared lost, by the following vote:

Ayes—Messrs. Alvord, Archer, Axtell, Bergen, Burrill, Cassidy, Chesebro, Cooke, Corbett, Ferry, Flagler, Harris, Landon, Merwin, More, Prindle, Rumsey, Schoonmaker, Spencer, M. I. Townsend, Wales, Weed—22.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Andrews, Beadle, Beckwith, Bell, Bickford, E. P. Brooks, E. A. Brown, Case, Champlain, Church, Clinton, Comstock, Curtis, Endress, Folger, Garvin, Gould, Graves, Hammond, Hand, Hardenburgh, Hitchcock, Houston, Kernan, Ketcham, Kinney, Lapham, M. H. Lawrence, Lee, Ludington, Magee, Mattice, McDonald, Merritt, Monell, Murphy, Opydyke, A. J. Parker, C. E. Parker, Reynolds, Robertson, Schell, Seaver, Stratton, Tilden, S. Townsend, Verplanck, Wakeman, Wickham, Williams, Young—54.

Mr. COOKE—I believe the only motion in order, under the circumstances in which we are placed is either to adjourn or for a call of the House. For myself, I have no taste for the kind

of amusement we undertook to indulge in on one occasion—a call of the House; but it seems that that alternative is presented. I voted to adjourn; a large majority of the Convention voted against it, and the motion was lost. It seems to be the wish, therefore, that the other motion be adopted. I therefore move a call of the House.

Mr. FERRY—I ask to be excused, if this motion shall be adopted, particularly on account of the state of my health. I rose from a sick bed and started to go home, but concluded to stay over till morning. I hope the Convention will not keep me here to-night; I ask to be excused.

Mr. S. TOWNSEND—I ask whether, if the question of the want of a quorum is not now raised, the motion may not be entertained that the Convention go into Committee of the Whole. I suppose by unanimous consent the question need not be raised.

The PRESIDENT *pro tem.*—The Chair is obliged to raise the question, the fact having appeared that no quorum is present.

Mr. WHED—I trust that the gentleman from Ulster [Mr. Cooke] will withdraw his motion. I do not understand the vote as he understood it. Several gentlemen who voted against the adjournment voted in the hope that the sergeant-at-arms might find enough around the capitol or in the city to constitute a quorum. Certainly I think no gentleman, when he finds that there are enough members of the Convention away from the city to prevent a quorum being obtained, will vote for a call of the House. As the sergeant-at-arms is here, having searched for members through the city, and as there is no quorum present, I move that the Convention adjourn.

Mr. M. I. TOWNSEND—I call for the ayes and noes. If we adjourn, I want those who vote for it to be recorded.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded with the call of the roll.

The name of Mr. Beadle was called.

Mr. BEADLE—I wish to say that on the former motion I voted against the adjournment in the hope that a quorum would be present. I vote now for the adjournment.

The name of Mr. Lapham was called.

Mr. LAPHAM—When the vote was taken before, I supposed the sergeant-at-arms was out, and that there might be a quorum in the city. I now vote in favor of adjournment.

The name of Mr. Ludington was called.

Mr. LUDINGTON—When the last vote was taken, I voted "no" with the expectation that the sergeant-at-arms might presently find a quorum. Being satisfied that if there is not a quorum in the House, there is not one in the city, I vote, "aye."

The name of Mr. McDonald was called.

Mr. McDONALD—When I voted before I voted "no," for the reason that I thought a good many others voted "no" when they did not mean it. [Laughter.] Now I vote "aye."

The name of Mr. Seaver was called.

Mr. SEAVER—On the former vote I voted in the negative; but to escape the duress which a call of the house will impose, I now vote in the affirmative.

The call being concluded.

Mr. E. P. BROOKS—I have voted "aye" on this motion; but I think I must have been mistaken, from the fact that I see that a number of gentlemen who have uniformly voted in favor of it are voting against it. I, therefore, change my vote, and vote "no."

The call of the roll being concluded the motion was carried by the following vote:

Ayes—Messrs. N. M. Allen, Alvord, Andrews, Archer, Axtell, Beadle, Beckwith, Bell, Bergen, E. A. Brown, Burrill, Case, Cassidy, Chesebro, Church, Corbett, Curtis, Endress, Ferry, Flagler, Harris, Houston, Landon, Lapham, Ludington, Magee, McDonald, Merritt, Merwin, Monell, More, Murphy, Opdyke, Prindle, Robertson, Rumsey, Schoonmaker, Seaver, Spencer, Stratton, Tilden, M. I. Townsend, Wakeman, Wales, Weed, Wickham—46.

Noes—Messrs. C. L. Allen, Bickford, E. P. Brooks, Champlain, Clinton, Comstock, Cooke, Folger, Garvin, Gould, Graves, Hammond, Hand, Hardenburgh, Hitchcock, Kernan, Ketcham, Kinney, M. H. Lawrence, Leo, Mattice, A. J. Parker, C. E. Parker, Reynolds, Schell, S. Townsend, Verplanck, Williams, Young—29.

So the Convention adjourned.

SATURDAY, September 21, 1867.

The Convention met at 9 o'clock A. M. The PRESIDENT *pro tem.*, Mr. Folger, in the Chair.

Prayer was offered by Rev. J. ELMENDORF.

The Journal of yesterday was read by the SECRETARY, and approved.

Mr. ALVORD—I rise to a question of privilege. It is not very often I do such a thing, but I am inclined to think, taken in connection with the affairs of yesterday, it is time at least that it should be generally known in this body that we have some double-barreled guns—members of this Convention—who speak outside of the Convention, and who are distorting the action of the Convention. I find in the *Argus* this morning, under its editorial head, this statement:

"A FIELD DAY IN THE CONVENTION.—The leaders of the 'political majority,' as they delight to call themselves, yesterday, attempted a sharp trick by withdrawing Mr. Graves' adjournment resolution—Mr. Folger speaking of it as a 'clog on the action of the Convention until disposed of;' but, attempting to fall back upon the resolution of Mr. Colahan, of Kings, came to the ground, by its withdrawal, fell heavily and unexpectedly, and with evident contusion of body."

Mr. WEED—I rise to a point of order. That the question raised, is not a question of privilege.

Mr. ALVORD—It is because I am connected with it.

The PRESIDENT *pro tem.*—The Chair is of the opinion the gentleman may proceed. He has not yet arrived to a question of privilege, but his remarks are tending that way.

Mr. ALVORD—I moved to take from the table the resolution of Mr. Colahan and accompanied it with the remark, that I did so for the purpose of defeating it; that I was opposed to it and did not want it in the way. Therefore, the statement in the *Argus*, should have been accom-

panied at least with my remark, before undertaking to say so far as I was concerned, or this Convention, that we expected to fall back upon that for its passage in order to get out of our dilemma.

Mr. MURPHY—I move a call of the roll.

The question was put on the motion of Mr. Murphy and it was declared carried.

The SECRETARY proceeded with the calling of the roll, when the following members answered to their names:

Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Axtell, Beadle, Beckwith, Bergen, Bickford, E. A. Brown, Burrill, Case, Cassidy, Champlain, Chesebro, Comstock, Cooke, Corbett, Curtis, Endress, Farnum, Flagler, Folger, Garvin, Gould, Gross, Hammond, Hand, Hitchcock, Houston, Kernan, Kinney, Lapham, M. H. Lawrence, Leo, Ludington, Merritt, Merwin, Monell, More, Murphy, A. J. Parker, C. E. Parker, Prindle, Reynolds, Robertson, Rumsey, L. W. Russell, Schell, Schoonmaker, Seaver, Spencer, Stratton, Strong, Tilden, M. I. Townsend, S. Townsend, Verplanck, Wakeman, Wales, Weed, Williams, Young—65.

Mr. CURTIS—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Curtis, and it was declared carried.

So the Convention stood adjourned until Monday evening, at half-past seven o'clock.

MONDAY, September 23, 1867.

The Convention met at half-past seven o'clock, P. M., and was called to order by the PRESIDENT. The Journal of Saturday was read by the SECRETARY, and approved.

Mr. CURTIS offered the following resolution:

Resolved, That on Tuesday, the 24th of September, at 12 o'clock, noon, this Convention will adjourn until the second Tuesday of November, at the same hour.

Which was laid over under the rule.

Mr. ALVORD—I desire to say that Mr. Hardenburgh is sick at his room, and desires to be excused from attending at this evening's session.

There being no objection, leave of absence was granted.

Mr. RUMSEY—Mr. Lapham was called home on business which he said he could not defer, and asks to be excused until Thursday morning.

There being no objection, leave of absence was granted.

Mr. CHESEBRO—I saw Mr. Rathbun in Syracuse, and the state of his health prevented him from coming to this Convention; and he desired to be excused.

The PRESIDENT—For how long a time?

Mr. CHESEBRO—No time was mentioned.

There being no objection, indefinite leave of absence was granted.

The Convention again resolved itself into Committee of the Whole on the reports of the Committee on the Finances of the State, and of the Committee on Canals, Mr. SMITH of Fulton, in the chair.

The CHAIRMAN announced the pending ques-

tion to be upon the amendment of Mr. Spencer, to the amendment of Mr. A. F. Allen.

Mr. SPENCER—When I proposed this amendment it was not so much for the purpose of advocating the principle embodied in it, as to call attention to the possibility that we might adopt some rule which would be so unbending, so unyielding in its character, as to prevent the Legislature, in some possible cases, from providing, by law, for taxation, so as to include all the property that ought to be taxed on all the proper subjects of taxation; and might, also, perhaps, compel the taxation of property which ought to be exempt from taxation. On further reflection, and consideration of the subject, I am satisfied that such will be the case, or that such may be the case. I know it has been suggested that, under the general power, the Legislature will have over this as over other subjects, everything possible may be included; but I recollect that there is a maxim like this applied to the construction of legal instruments, and to the construction of statutes: the express mention of one thing implies the exclusion of every other. I do not say that this will apply to the present case, but it may lead to a difficulty in the practical application of legislation to the subject, and bring the Legislature in conflict with the Constitution where the legislation in itself may be proper and intrinsically right. Besides, it seems to me that taxation in respect to the person is a proper mode of distributing the burdens of the government; and it is not so new as some gentlemen here would seem to suppose. In five out of the six New England States polls are taxed; and I would like to inquire if there is any State, or if there is any government where burdens are more equally or more justly distributed than they are there. I would like to ask if there is any State or government where the finances are administered with more care and with more economy than they are in the New England States. There is another consideration in respect to this subject which it seems to me ought to invite attention to this mode of taxation, and that is this: the great security against improvident and reckless expenditure; and the great security against corruption in the administration of the finances of the State, lies in the interest which the citizen has in the disbursement of the public money; and that interest arises out of the fact that the citizen pays the taxes. You will find every where that it is they who pay the taxes who are looking after the mode of their disbursement. They are the persons who inquire whether they are providently or wisely expended. It is they who are anxious with regard to charges of corruption. I insist that the more you extend the burdens of taxation, the larger the class of persons, especially those who are voters, who are compelled to bear the burden of taxation, to the greater degree will you find the citizen and the voter watchful in regard to the public expenditure, in regard to the ways in which money is expended, and the objects to which it is applied. These considerations, it seems to me, should induce the including of this method of bearing the public burdens among any which will be adopted by this Convention. But as I believe

that the sense of a large majority of this Convention is against any such measure at the present time, I withdraw the amendment.

Mr. RUMSEY—I now offer the amendment I sent to the clerk's desk on Friday, to insert after the words "such persons" in the substitute, the following:

"Except such debts as in the sworn statement hereinafter mentioned, shall be particularly set out, with the name of the creditor, the date, amount, consideration, and form of such indebtedness, and when the same will become due."

The whole object of that amendment is to deduct from the valuation of the property such amount of debts as shall be stated in the sworn statement which is required by the section, by putting into the statement the whole details of the indebtedness, so that it may be traced out by any person desiring to examine it.

Mr. MAGEE—I ask the gentleman from Steuben [Mr. Rumsey] to add to the amendment the residence of the creditor, so that we may know where to look for him.

Mr. RUMSEY—I have no objection to that.

Mr. S. TOWNSEND—I would like to make an inquiry of the gentleman from Steuben [Mr. Rumsey]. I think the difficulty which will suggest itself with regard to his amendment is that it would involve the statement of a man's whole business, every credit and every debt. Do I understand the gentleman to go as far as that, to require a transcript of his whole business?

Mr. RUMSEY—It does not do any such thing.

Mr. S. TOWNSEND—How far does it go?

Mr. RUMSEY—It goes as far as this: if any person about to be assessed desires a deduction from the valuation of his property by reason of the debts that he owes, it requires him to state particularly those debts that he asks to be taken out of his account.

Mr. S. TOWNSEND—Then to get at the whole amount of his indebtedness he must present the whole account.

Mr. RUMSEY—If he does not desire a reduction for any debts, they need not be stated.

Mr. S. TOWNSEND—Will it not be better to move an amendment on this floor, to allow a man to deduct the aggregate of his debts?

Mr. RUMSEY—No, sir. They do that now, and can swear to any amount they please.

Mr. OPDYKE—The amendment of the gentleman from Steuben [Mr. Rumsey] certainly improves the proposition as submitted by the gentleman from Chautauque [Mr. A. F. Allen]; but I shall feel compelled to vote even against the amendment. I think it is altogether too inquisitorial in character to suit the tastes of our people. But, sir, I desire to say a few words, first in relation to this proposition as it would stand without the amendment. There have been two modes of direct taxation carried into practice, one in this State and many others, and another in some other States. There may have been other modes adopted; but these are all with which we are familiar. The method adopted in this State is, to regard evidences of property as property; that is, to treat *chooses* in action as property, and to assess all residents on the real estate, and personal property owned by them,

including securities, and to allow each to deduct the amount of his indebtedness. In carrying out this method in this State, we permit assessors to assess the value of the real and personal property belonging to each individual, according to their judgment or their caprice; and if they happen to get the assessment too high, the tax payer is permitted to come forward and swear it down to the amount which in his judgment his property is worth. That is our method; and it has been found in practice, to work very badly. The assessors very often assess the individual to but a small fraction of the personal property he possesses; and they have been running down in their assessments of the value of real estate until it is supposed that it is assessed at less than half its actual value in this State. It is supposed that under this system the personal property is assessed much below one-half of its actual value, and this is done without any rule to secure uniformity in the assessments, some being assessed for the full value of their property, others for less than half. The other mode which has been adopted in many States, not I believe by virtue of constitutional provision but by statute laws, is to require tax payers to hand in sworn lists of all the personal property they own, after deducting the amount of their indebtedness. That, so far as my knowledge goes, has worked much better. It has produced much greater equality of taxation. We know something of the operation of requiring the tax payer to render an account of the property held by him, by our experience under the revenue laws of the United States, under which we are required to give in sworn statements of our income. I believe that those returns, given in under oath, whether in regard to the amount of property owned by the individual or in regard to his income, are in the main accurate. I think there is a sufficient sense of moral responsibility in those possessing property to warrant us in relying upon the general accuracy of the returns thus made. Therefore, I regard that mode of taxation as infinitely superior to ours. I should be very glad to see inserted in the Constitution of this State some provision, if it can be framed, that will secure the assessment of real estate at its actual cash value, and require returns under oath of the personal property owned by each individual, after deducting his indebtedness. There is, however, a much better method than that, and there is one much worse, which we have now before us. I do not know that the better method to which I refer has ever been tried. But the true method, in my judgment, is this: assess all actual property, whether real or personal, in the hands of the possessor, not including that which represents property, as *choses* in action, but simply the property itself. If the assessors would go from door to door, from one end of the State to the other, and assess all the visible tangible property in the possession of each individual, they would get the entire property of the State; no more and no less. None of it will be twice taxed; and none of it will escape taxation. The objection that would be urged to that method and which I am satisfied would be fatal to it for the present, is, that it would tax the holders of property

rather than the real owners. But such would not be the result. The operations of the laws of trade are such that the tax would be ultimately paid by the real owners. For example, if the tenant of a house should be required to pay the tax, we all know that he would rent it at a reduced price commensurate with the amount of the tax paid. This practice obtains to a large extent in many localities; and the tax, though paid by the tenant, falls on the real owner. Therefore, the true and proper method of taxing the property of the State, would be to tax it in the hands of the holders. In doing that, no property would escape. These pieces of paper called securities or *choses* in action which represent property, and which are called property, are not property in themselves. They simply represent property which exists in the hands of others. In making the assessment the way I suggest, we should get the entire wealth of this State, unless in its business relations to other States, its citizens should be larger creditors than they are debtors. In regard to this State, I have no doubt this is the case; that the State of New York is a creditor State; that is to say, the external indebtedness of its citizens is less than their external credits. But as I regard that method of taxation as not now feasible, I come next to the one presented by the gentleman from Chautauqua [Mr. A. F. Allen], which I regard as the very worst method I ever heard proposed. He proposes to tax all the actual personal property in the possession of each individual, and to add thereto every evidence of property in his possession, whether a note of hand, a certificate of stock, a book account, or any other form of credit, and not to permit him to deduct from the assessment any portion of his indebtedness. That, sir, would be a tax upon commerce and a tax upon credit, as well as a tax upon property. Allow me to illustrate. I believe the gentleman's plan of assessment embraces corporations as well as individuals. Let us first trace its effects on banking incorporations. There is one bank in the city of New York, and it is almost a type of the whole, which, with a capital of two millions of dollars, holds in possession, money and securities to the amount of twenty millions, or eighteen millions in excess of its capital. For this excess it stands indebted to its depositors and bill-holders. These depositors and bill-holders reside in various parts of the Union. Now, according to the method of the gentleman from Chautauqua, he would tax all the property in the possession of the bank, and all the securities it holds; and not being allowed to deduct its indebtedness, it would be taxed upon twenty millions of dollars; which at the rate of three per cent per annum, would make thirty per cent upon its capital of two millions. I think it would not take more than one year to tax that bank out of existence, or out of the State. Another bank with which I am connected has a capital of five millions, and upward of twenty millions of securities in its possession, which, if taxed at three per cent per annum, would be over twelve per cent on its capital. It is true that by taxing so large an amount of imaginary property, the rate of taxation would be diminished, and we will suppose it to be re-

duced one-half. The bank I first referred to would then be taxed fifteen per cent; but the utmost it can earn is ten per cent; consequently the bank would be compelled to go out of existence at once. It is so with dealers in exchange. Take as an illustration a dealer in foreign exchange, whose business consists in selling bills payable sixty days after sight, for which he receives in payment cash or securities. These remain in his hands to offset his indebtedness abroad for the bills he has drawn, of which there may be ten millions running to maturity. The assessor, under the plan proposed by the gentleman from Chautauque, takes the ten millions of cash and securities in the hands of the exchange dealer without allowing him to deduct the ten millions for which he is indebted abroad. You will thus drive him from the city and State of New York on the very first visitation of the tax-gatherer. So will you all trust companies, all private bankers, and in fact all the mercantile class. Take commission merchants for example. I am not dealing in hypothetical cases; I refer to firms with whose business I am acquainted, and I can vouch for the existence of cases such as I offer in illustration. Take a commission merchant with a capital of half a million of dollars, doing a business of eight millions per annum, a strictly commission business, receiving consignments from the manufacturers of New England, issuing his acceptance at four months' credit, and selling the goods consigned to him at four to six months' credit. The result is, that the merchant holds in his possession securities averaging from three to four millions of dollars, while he has a stock of goods on hand belonging to these New England consignors worth a million dollars more. You tax him, therefore, on from four to five million dollars of property and securities, while his actual capital is but half a million. In other words, you tax him from twenty-four to thirty per cent per annum on his capital. How long do you think it would take to tax that merchant out of the city and out of the State of New York? It is a tax upon mercantile business so onerous that no branch of business could survive it. I could give you further illustrations, stronger than I have mentioned. The amount of the taxation would sometimes be upon twenty millions, with a capital not exceeding one million dollars, equal to sixty per cent per annum. I had supposed, when this proposition was introduced, that it would not be seriously pressed. I do not think it possible to devise a scheme that would be more certainly fatal to commerce in this State, and especially in the city of New York. I believe that this amendment, if adopted, would tax nearly the entire body of merchants out of the city of New York into other States; and the result would be to destroy the commercial supremacy of that city, and to lessen the value of its real estate, within two years, probably a hundred million dollars. It seems to me that about such a proposition we should not hesitate a moment, but reject it at once. I object to the amendment of the gentleman from Steuben [Mr. Rumsey], not because it will not bring about equity in the matter of taxation—for it in fact aims, indirectly, to establish the

system which I regard as the most just and practical at present, namely, to require sworn statements of personal property, with the indebtedness deducted—but because it is inquisitorial and contrary to the spirit of our institutions, and to the tastes and habits of our people. The government of the United States, in requiring sworn returns of income, proceeds to no such detail. It furnishes blanks, in which incomes are classified, but it descends to no such minuteness of detail as this amendment proposes. If the long lists of indebtedness which the amendment describes were to be required, there are hundreds of mercantile ledgers and banking ledgers which would fill quires of paper with the statement of the debts due, the time when due, etc. I think it should be sufficient for tax payers to furnish, under oath, classified lists of personal property, including credits and deducting debts. We should thus arrive at results sufficiently accurate. The Committee on Finances have had this subject under consideration, and I think no one member of that committee feels competent to frame a provision that will insure the assessment of real estate at its actual cash value. A proper provision relating to personal estate I think could be readily framed, on the plan of requiring sworn lists as adopted in other States. It seems to me more difficult to get at the actual cash value of real estate; and if we cannot do that, I think we had better leave the power with the Legislature, in the hope that it will devise some better plan than that which has been in operation for the past few years, and which is very demoralizing in its effects and unjust in its results.

The question being taken on Mr. Rumsey's amendment, the vote was declared to be 26 to 40; no quorum voting.

The question being again taken, the vote was 34 to 46; no quorum voting.

The PRESIDENT resumed the chair in Convention.

Mr. SMITH, from the Committee of the Whole, reported that the committee had had under consideration the reports of the Committee on the Finances of the State and of the Committee on Canals, and it appearing, on a division, that no quorum was present, had directed their Chairman to report that fact to the Convention.

The PRESIDENT directed the Secretary to call the roll of delegates.

The SECRETARY proceeded to call the roll and the following members answered to their names:

Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Baker, Beadle, Beals, Beckwith, Bickford, E. Brooks, E. A. Brown, Case, Cassidy, Champlain, Chesebro, Cooke, Corning, Curtis, Duganne, C. C. Dwight, Endress, Ferry, Flagler, Folger, Fowler, Garvin, Gould, Grant, Graves, Greeley, Hadley, Hammond, Hand, Harris, Hitchcock, Hitchman, Houston, Jarvis, Ketcham, Kinney, Landon, Larremore, A. R. Lawrence, M. H. Lawrence, Loew, Ludington, Magee, Mattice, Merritt, Merwin, Monell, Morris, Opdyke, A. J. Parker, C. E. Parker, Pierrepont, President, Prindle, Prosser, Root, Roy, Rumsey, L. W. Russell, Schell, Seaver, Smith, Spencer, Stratton, M. I. Townsend, S. Townsend, Van Cott, Wakeman, Wales, Weed, Williams, Young—78.

The **PRESIDENT** announced that no quorum being present, and no motion for a call of the House being made, the Convention would stand adjourned until to-morrow morning.
So the Convention adjourned.

TUESDAY, September 24, 1867.

The Convention met at nine o'clock A. M.

Prayer was offered by Rev. J. P. MAGEE.

The Journal of yesterday was read by the **SECRETARY** and approved.

Mr. FOWLER—My attention has been called to an error in the Journal of the 12th. A petition was presented by me from the trustees of the Oneida Seminary, against the abrogation of the Board of Regents. It appears in the Journal that it was in favor of abolishing the Board of Regents.

The **PRESIDENT**—The alteration will be entered on the Journal as requested.

Mr. LARREMORE presented the remonstrance of John C. Green, President of the council of the New York city University, and the whole faculty, against the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. E. BROOKS presented the remonstrance from the Institution for the Deaf and Dumb, on the same subject.

Which took the same reference.

Mr. CHAMPLAIN presented the remonstrance of the inhabitants in the county of Wyoming on the same subject.

Which took the same reference.

Mr. PRINDLE presented the remonstrance of the trustees and teachers of Norwich Academy on the same subject.

Which took the same reference.

Mr. PROSSER presented the petition of two hundred and ten citizens of Buffalo against establishing a superior court for the city of Buffalo.

Which was referred to the Committee of the Whole.

Mr. DUGANNE presented the petition of O. R. Kingsbury and forty-four others against sectarian donations.

Which was referred to the Committee of the Whole.

Mr. CURTIS—I call up for consideration the resolution offered by me yesterday.

The **SECRETARY** proceeded to read the resolution, as follows:

Resolved, That on Tuesday the 24th of September, at twelve o'clock noon, this Convention will adjourn until the second Tuesday of November, at the same hour.

Mr. CURTIS—**Mr. President**, at the regular election of last year a constitutional majority of the electors decided that a Convention should be called to revise the organic law. The Legislature at its next session made the proper provisions for assembling it. Those who were opposed to it chose, and I think wisely chose, not to withhold themselves altogether from the Convention, but to be represented in it; and they are represented in it, as we have had pleasant experience for the last four months, by some of their best and ablest leaders. When I use these words, sir, I trust that every gentleman representing that minority will understand that I am speaking individually

of him. In the same spirit which dictated the election of those representing the minority, the Convention was organized, and in a manner which commanded the respect and esteem not only of the Convention itself but of the State. It then proceeded to the work before it. Now, **Mr. President**, a fundamental law for the State of New York is a work of so great importance that it is not surprising that gentlemen gathered from every pursuit should have found themselves amazed at the extent of the task confided to them. Still, sir, from that time to the present, with the single exception of an adjournment for about a week at the 4th of July, the Convention has worked faithfully and continually. Acting in the same spirit of which I have spoken, the representatives of the minority, and again as I think wisely, have not been merely a corps of observation. They have taken their full share in the deliberations of this body. They have done their share of the talking. They have done their full share of the staying away. If the work of the Convention has been seriously delayed by speech, those gentlemen share the responsibility. If it has been paralyzed by unnecessary absence, the responsibility is likewise divided. I say that we have worked faithfully down to the present time. I am aware, however, that this is not the view of every gentleman. My honorable friend from Westchester [**Mr. Greeley**] does not share this opinion. From the first it has been his conviction that our work might readily have been done in about a month; and with a natural desire which every gentleman will comprehend, that our work should be done not only as well, but as speedily as possible, he has not spared the spur of his tongue on every proper occasion. But I think we have had reason to see in his own case, sir, that it is not always the greatest haste which is the best speed. The gentleman did in a week what it took the Convention about a month to undo. He seems to me not to have considered accurately the scope of our task and the character of our preparation for it. How many gentlemen among us understand the question of the canals of this State sufficiently to vote upon it without ample preparation? How many of us understood the subject of education in this State sufficiently to vote upon it without careful consideration? And so, sir, with all the other great State interests. As soon as possible the business of this Convention was distributed, whether wisely or not it is too late to inquire. We went into committees, and I know that the committee with which I had the honor to be associated worked patiently and faithfully from the beginning. The Judiciary Committee, one of the most important of all, has held, I am told, not less than fifty sessions, and I know personally, from my acquaintance with members of that committee, how diligently they have done their work. The Committee on Finance, the Committee on Canals, the Committee on State Prisons, the Committee on the Powers and Duties of the Legislature, and all the others, have worked as men, in a sickly and hot summer, have seldom worked. For one, sir, I have nothing to say derogatory of the labor of this Convention. I do not feel myself accused of negligence; I cer-

tainly do not feel myself convicted. I came here, sent by the people of this State to do a great work, and to do it well. I was not sent here, and I do not conceive that any delegate came here, to make any specific amendment in any specific time, and there seems to me to be great misapprehension upon this point. We have, at the end and at the beginning of the week, often found ourselves without a quorum. I am not surprised at that. If our work were to be done well we must have relaxation. If it were to be done at all, we must have some time for our other duties. Well, sir, at the end of the month, my honorable friend from Cayuga [Mr. Rathbun] unfolded before us on Friday morning, a list of the work yet undone. Now, all gentlemen will agree that if the Constitution were to be submitted to the people at the next election, it must have been completed, at the very latest, by the 10th of October. But from the experience of previous Conventions, and from the nature of the case it is obvious that a week or ten days must be devoted to the labor of revision. The Constitution must therefore have been finished, in Committee of the Whole, by the 1st of October. Now then, sir, in the middle of September, with two working weeks before us, that is, with scarcely if at all over ten days available, we find ourselves confronted with the report of the Judiciary Committee, and with that of the Committee on Cities. I need go no further. In the Convention of 1846, the debate on the judiciary article occupied between four and five weeks; and the debate upon the report on cities, one of the most vital and important in this Convention is a subject which is entirely new and which certainly could not be disposed of within a week. The debate upon the judiciary report and upon city governments would necessarily occupy more than the time which remains for the Convention, if it would finish its work by the 1st of October. Mr. President, within the last week it has become evident to every member of this Convention that we could not perfect the Constitution in time for the November election, and that we had better adjourn. The moment that conviction became universal, adjournment became imperative. Our experience in the Convention shows it. The debates languish, and as my friend and colleague from Richmond [Mr. E. Brooks] remarked the other morning, we are fatigued, physically and mentally. Men cannot, and if they could they should not, sit as this Convention has undertaken for the last fortnight to sit. Why then are we reluctant to adjourn? I think because of a foolish fear of a power that we suppose to be watching us, jealously and remorselessly watching us—the people of the State. But what do we fear? The intelligence of the people of the State sent us here, implicitly trusting in our judgment, and I implicitly trust for my part the intelligence of the people of the State; and I have no fear that the people will misunderstand our action. They know, probably, but if they do not we can inform them, the importance of the work. They know that we cannot hurry up a Constitution in a fortnight, or a month; and when they learn the amount of business that lies unfinished upon our table, they understand why we adjourn. So, sir, treating the people

as I expect them to treat me, knowing our own feeling, but acting without consultation, I brought forward last evening the resolution which I now call up. It provides for an adjournment from to-day until the second Tuesday of November. My reasons for indicating that day rather than a later day are obvious. They commend themselves to every gentleman. We are all, as we should be, interested in the politics of the State and the country. We are on the eve of a very great and significant election. It is not our shame, sir, it is our credit that we are all profoundly interested in the result of that election. Already we are drawn within its vortex. The asperity of the coming contest already invades the Convention, and our minds are unfitted for the proper prosecution of a duty that rises superior to all party considerations and interests. I do not conceal my own feelings upon this subject. Differing deeply, politically, with the representatives of the minority, I feel in them and in myself the presence of this dividing spirit. Let us act then, sir, like sensible men; we have heard the bugle call each to his own quarters. Let us part upon this field of peace like brave men who believe what they maintain, who mean what they think. Let us go hence and grapple in the great political contest. I hope, sir, by all my hopes of the welfare of this country, that those with whom I differ are to be totally defeated in the election which is at hand, and I give them my word, as the humblest soldier in the ranks on my side, that I will do the best I can to secure that defeat. And when that battle is over let us return here to resume this duty and to perfect the fundamental law which we have begun to make. The revised Constitution of the State is sketched broadly in the reports already presented. The people can see in outline the Constitution which the committees propose. The Convention will of course modify the sketch in many ways, and it can do so more wisely if it takes time to consult the people upon the proposed reforms. We shall return here refreshed. We shall finish the work by the time the Legislature meets, and then, sir, it is within the discretion of the Convention—certainly within that of the Legislature—to decide when the Constitution shall be submitted to the people. The Constitution is and should be in no sense a party work. I am therefore unwilling to perplex the consideration of the fundamental law by presenting it to the people at a political election. Such an instrument should always be presented for the decision of the people who are to adopt it at an election especially called for that purpose or at the town meetings already provided. I propose that this Convention adjourn to November instead of the spring because the Constitution can then be considered and decided without being cast into the presidential campaign. The national election of next year will be one of the most important elections which the country has seen, and I do not wish to perplex and embarrass it. It is the great contest which is to decide whether the late war was fought in vain or not, and which must determine the welfare of the United States for many a year to come. The issue will be simple. Let it be simply presented to the voters of

this State. But it cannot be simply presented or fairly considered if we embarrass it with all the details of a new State Constitution. With these reasons, sir, and confident of the intelligent judgment of the people upon our action, I submit the resolution, and I beg for it the frank and candid consideration of the Convention.

Mr. WELLS—I propose to amend the resolution offered by the gentleman from Richmond [Mr. Curtis] by striking out the words "second Tuesday in November," and inserting instead, "first Tuesday in May next, or to such time as the Legislature may provide." I do not propose, Mr. President, to discuss at any length the amendment offered by myself, nor do I propose to answer the remarks of the gentleman from Richmond, many of which I agree with. I will simply say that I, like that gentleman, feel a radical difference between myself politically, and those of the creed that he advocates. I cordially wish, with him, that the coming election may determine between us, and I sincerely hope that the party to which I belong and which represents my views, may succeed in that election, as he cordially hopes that the party that he belongs to may succeed. I agree with him that in one sense our work here is not in any way political, and that politics should not have been introduced into our discussions; but I recognize the fact that it has been; I recognize the fact that within the last four days we have had here a set political speech, emanating from the political party to which the gentleman belongs, entirely out of time and without reason. I must therefore dissent from his statement that we have had no politics here, or that our action has had no political significance. Upon the amendment offered by myself I desire simply to say that I am only one of those who believe that the Constitution of 1846, with a few exceptions, is a good Constitution, adapted to the wants of the people who live under it. And I, sir, could I have determined what course this Convention should have pursued, would not have advised making an entire new Constitution, striving to get it as far from the Constitution of 1846 as possible. I should have advised and it has been my desire to have perfected an amendment upon suffrage; an article providing for the economical and honest management of the canals; an article declaring the rights and powers of cities, and abolishing and prohibiting commissions; and an article reforming the judiciary, and have submitted these articles to the vote of the people separately. The majority of this Convention has determined otherwise, and now it is apparent that an adjournment is to take place, and although, sir, I believe it will be better for the people of this State to perfect a part or all of the four subjects referred to by me, and submit them to the people at this fall's election, and adjourn without date; still, if this Convention is to adjourn over the election in November, at which time it is provided by law that the people shall pass upon our acts, I hold that it is our imperative duty to adjourn to some day after the meeting of the next Legislature, and I have therefore moved to amend by inserting the first Tuesday of May. I move this amendment for the following reasons: First, November is a month that will be incon-

venient for every member upon this floor to attend, and we shall be worse off for a quorum than now. And as we cannot get through before the 1st of January it will put the State to increased expense. Secondly, There can be no object for so early a session this fall, unless it is to submit our work to the people at a special election, which would put the people of this State to great inconvenience, cost a large sum of money, would be an unfair submission, and perfectly unnecessary. And, lastly, Because, if we adjourn over the day named in the act for the submission of our deliberations to the people, we must, it seems to me, if we respect the laws of the State, adjourn to a day far enough ahead to allow the people, through their representatives in the Legislature assembled, to pass an enabling act, and say when we shall meet again, if ever.

Mr. KERNAN—Mr. President, in reference to adjourning over to either of the days proposed. I suppose all will agree that in doing so, we are not acting in accordance with the law under which we were elected, because that law provides that we shall submit the result of our labors at the approaching November election. It enacts that this Convention may either submit to the people amendments to the existing Constitution, or propose and submit an entirely new Constitution; and the fifth section provides that the "said amendments or Constitution shall be submitted by the Convention to the people for their adoption or rejection at the next general election, to be held on the Tuesday next after the first Monday in November next." If therefore, we adjourn to either of the days named, any labor we may perform afterward will doubtless be entirely fruitless, unless there shall be some enabling act passed by the Legislature. In view of this fact, and of others which I will not detain the Convention by enumerating, I have a proposition to submit. Bear in mind that there were two subjects which had much weight in leading to the call of a Convention at this time. The one, was the court of appeals of this State. It had become entirely overburdened with business. Without fault on the part of the judges, its condition had become substantially a stay and stop law on the enforcement of remedies; and very many electors were anxious that there should be a Convention held this year for the purpose of remedying this serious practical difficulty and hence voted for the Convention. Doubtless there were also a large number of electors who desired that the right of suffrage should be extended beyond its present limits and with this view they voted for a Convention. In my judgment, these two questions entered largely into the minds of electors in calling this Convention; and while I do not doubt that the present Constitution may and should be improved in many other respects, yet it seems to me that instead of now adjourning over beyond the time when we are required by law to submit the result of our labors to the people, it is right and wise that we should present amendments to the present Constitution, on these two subjects, at the coming election. The article on suffrage has occupied a great deal of our time and has been perfected, according to the views of the majority

of the Convention; this is now ready for submission for rejection or approval by the people. The article as to the court of appeals, can doubtless be perfected in a very few days, and will undoubtedly be adopted by the people, and furnish a remedy for the serious delays in the administration of justice which exist and will increase under the existing Constitution. Assuming, therefore, as I do, that the Convention will not now be able to perfect an entire Constitution in time to be properly submitted to the people at the approach in November election, I am clearly of the opinion that we should, and I urge upon members that we proceed at once and perfect the article as to the court of appeals, and provide that the same and the article upon suffrage be submitted at the next November election to be voted upon separately. Having done this, I am in favor of adjourning without day, leaving other defects in the Constitution to be remedied by amendments to be perfected and adopted as provided for in that instrument, or by another Convention, if the people see fit to call one. I am opposed to adjourning to either of the days named. I am opposed to adjourning over beyond the election at which we are required by the statute under which we were elected and now sit to submit the results of our deliberations to the people. I, therefore, offer the following amendment, which I take the liberty of reading before sending it to the Chair: strike out all after the word "*Resolved*," and insert, "That the Convention perfect an article as to the court of appeals, and provide that the same, and the article as to suffrage, be submitted to be voted upon separately at the coming November election, and then adjourn without day."

Mr. GREELEY—The people of our State conferred upon this body a great and honorable trust. For my part, I will say that I accepted that trust not only cheerfully but gratefully. There is no other position, no other office of any kind or nature, that I would have accepted so willingly. I believed that our Constitution needed a very decided reform, very important changes; that experience had proved it defective in very grave particulars. So believing, I came here, and came here in full view of the fact that an act of the Legislature required us to submit our work to a vote of the people at the ensuing State election. I did not discuss the competency of the Legislature so to direct us—I respected the fact; and, consequently, when I entered on this work, I entered upon it with exceeding anxiety that our business should be so shaped and our labor so directed that we should complete our work in ample season for its public and careful discussion before the people, and its mature consideration by the people, before election; and when gentlemen pleaded for more time and freedom in our discussions here, you will bear me witness, Mr. President, that I always interposed the question, "How much time do you propose to allow the people? That is the important consideration." Gentlemen here I presume to be, in the average, more intelligent and better instructed with regard to the questions that we are to act upon than the mass of the people can be; consequently, if it takes a week for us to consider a question, say the question of the canals; or of the finances, before we are prepared to vote

upon it, how much time must the people have before they will be prepared to vote upon all this complicated work, so gravely, so vitally affecting their rights and their interests? Mr. President, I have sometimes been rude, and have offended those whom I wished to consider, and still hope to reckon my friends, simply because I desired that this work should be completed, at the latest, by the 1st of October. I had no hobby; I had no pet section; I had no particular thing that I wished done or undone, considered or left unconsidered by this Convention. I desired that the Constitution should be prepared, and that it should be a whole document, to be spread before the people by the side of the present Constitution, so that the people should be able to say, "Here is one, there is the other;" and should have full time to consider them and determine which, on the whole, they preferred. I am utterly opposed to all these schemes of submitting separately bits and pieces of a Constitution. I cannot tell, myself, whether I would or would not like a new Constitution with a particular article left out. I cannot tell whether to vote for the whole Constitution or not, in view of the fact that three-fourths or one-fifth, or one-eighth of it may be stricken out by a popular vote, in such manner as to leave the rest of it, in my judgment, imperfect and unfit for adoption. So, then, I have labored from the first day until a very recent date, with one consuming desire—that we should, at all events, complete our work seasonably. I know the people will vote it down if they have not a fair chance and full time to consider it. I always vote "no," when a proposition is sprung upon the Convention and I do not know what it means, or which way to vote upon it. And the people will vote "no" upon our work—because that is the safe way, and everybody ought to vote so—unless they have time to consider and understand fully beforehand what they are voting upon; and they can better judge it as a whole than they can if it comes before them piece by piece—a patchwork Constitution. I do not believe Mr. President, that a good Constitution could be made in that way. Now, during the first three months of this Convention, I was not absent, I think, from more than four sittings in all. Other gentlemen can say how it has been with them. Some of them, no doubt, have been even more faithful; but you will remember how urgent I was that we should not adjourn over from Friday to Monday evenings (practically Tuesday morning) and that we should not waste any of our time. Consider now, the proposition of the gentleman from Clinton [Mr. Weed]. He proposes that we should adjourn over until next May, and thereby throw the work of this Convention right into the boiling caldron of a presidential election. What chance has it to be dispassionately judged if you do so? The effect of adopting that proposition would be to submit the Constitution to the people in the excitement of a fierce presidential struggle, when everything takes the hue of politics. At such a time, men are not quite sane—that is to say: they judge incidental matters by their effect on the prospect of their party or their candidate. All incidental or side questions that come up will be regarded simply in the light of presidential cap-

ital. To my mind such an adjournment of the Convention would be a great disaster. But the gentleman from Clinton [Mr. Weed] says if we complete our work in December, we shall have to order a special election to pass upon it. Not at all. Suppose we meet on the 11th or 12th of November next, and perfect the work by Christmas—as we well may—then the Legislature takes it up and submits it, or we submit it, to the people at their town elections—including all city or village elections to be held in the earlier half of the year 1868—and let them then vote whether they will accept or reject our Constitution. All men are aware that town elections are not governed by party or political considerations so fully as State elections are. In their town elections the people are greatly governed by their personal preferences, interests, wishes, prejudices or whims, and far less by politics than at State elections. In my judgment our work would have a far better chance of being fairly considered if submitted at the town elections than at any State election, much less the presidential election. The gentleman from Oneida [Mr. Kernan] says that if we adjourn from now we shall practically have dissolved, or rather that our work henceforth will have no validity. Why, Mr. President, our work has no validity at all as I understand it, in the contemplation of this body, except as the people shall approve it. The instrument that we frame here becomes operative only because and when ratified by the people. Their ratification will make it a Constitution without reference to the fact that the Legislature or the Convention has or has not accomplished its work within a particular time. I do not say, Mr. President, that this Convention has not wasted time. It has given a wider scope to debate than seemed to be desirable, in view of the necessities pressing upon it. In view of the fact that the people expected us to be prepared to submit our work at the fall election I felt that we were constrained to condense our speeches and limit our discussions by that proclaimed and understood necessity. I may have been mistaken in this. I do thoroughly admit that it were better to be six months making a good Constitution than three months making a bad one; and I have no doubt that the people will be of that mind. If our work shall, in their judgment, be worthy of their acceptance they will not so much look how long we were doing it. Their question will not be "How long have you been doing it?" but, "What have you done?" There have been times when this Convention was left without a quorum. I regretted it then, and I regret it still; but I know that most men—professional men especially—are accustomed to find, during the summer months, some relaxation from the severe labors of the rest of the year; and so, at times, gentlemen have stolen away to their homes or to other places, seeking that relaxation which they felt they needed. I believe that no party here will or can reproach another with this. I am sure that the political minority will not reproach the majority with having been responsible for a larger share of these absences than the minority themselves were. I have resisted motions to ad-

journal over and to adjourn protractedly, often with a majority of my political friends voting with me, but never, I think, with a majority of those who disagreed with me in politics voting with me. But I care not for that. In my judgment, the proposition of the gentleman from Richmond [Mr. Curtis] is the best of those now before us; but I hope he will so modify it as to make our recess commence at the close of this day's sitting—not necessarily at twelve o'clock, but when we get ready to adjourn. Mr. President, we cannot flily deliberate in this body in the heat and strife of a political contest, whether it be now or next summer. We must be able to banish the consideration of politics and parties so far as possible while we act on these subjects. Now, I believe that the work we have done, so far as it is done, has been in the main well done. I believe our suffrage article is a great deal better than that it proposes to supplant—more democratic, more republican, more consistent with itself and with the principles of our institutions. I believe that the principles we have embodied in that article for the suppression of political corruption at the ballot-box, where corruption takes its rise, will have that effect; yet with the least embarrassment possible to honest voters and voting, the least ever embodied in any Constitution on earth. I believe that never before was a suffrage article devised which would so completely prevent the purchase and sale of votes as does that very article that we have framed. I have been reproached, Mr. President, for the length of time taken to finish that article. A gentleman said here recently that I hurried it through my committee in one week, and that it took this Convention one month to perfect it. Now, I should like to submit to a jury of twelve competent, impartial judges the article as reported and the article as adopted, and I venture to say that nine out of the twelve would regard the article reported as the better one. [Laughter.] I from day to day entreated the Convention to close that wasteful debate, which led nowhere, take the article as it came from the Committee of the Whole, perfect and pass it; but the Convention overruled me and insisted that the debate go on; some gentlemen saying, "Why, there is nothing else ready, and we may just as well as not debate this;" and others saying, "We may as well let the steam be worked off on this proposition, and then there will be no tendency to debate at length thereafter." I fought that as well as I could; yet honorable gentlemen have lately risen here to reproach me with the length of time taken in acting upon my report, when it was all against my will. One gentleman says, "Why, there was a month spent on *your* report, and now you won't allow us a fortnight on *mine*!"—so that I was held responsible for that month, as if I had not done my best to make it less. Mr. President, if the ghost of vanished hours—I will not say murdered hours—should rise here [laughter] to reproach with opportunity wasted, with time mispent, I can say to that awful shade, with all Macbeth's earnestness, and more than his truth:

"Thou canst not say I did it! Never shake
Those gory locks at me!"

Mr. TILDEN—The honorable gentleman from Westchester [Mr. Greeley] says that the validity of the action of this body will depend upon its ratification by the people. Sir, no doubt that is true. But it does not meet the legal emergency in which we find ourselves placed. It is this: that the act under which we are convened provides no mode of a legal submission of the result of our labors to the people, unless it be submitted, under the law as it now exists, at the November election; that without a new act of legislation on the part of the government of this State, passed through all the forms of law, providing for the submission, for the holding of an election, and for all the machinery to carry the election through, the work of this Convention perishes forever. Sir, we are here under the commission of the people of the State of New York, our action regulated, our rights defined by the legislative authority of this State. We have no power whatsoever, except such as we derive from the commission. Our adjournment has no validity as to its future purposes and the future action it contemplates; and with the close of our proceedings, this Convention ceases to have any existence whatever as a lawful body in this State, except it is brought anew into existence by a new act of the Legislature, hereafter passed. As the law now stands—our whole function is expressly confined—expressly limited by the statute under which we exist to a period which will expire on the day of the next November election. That, sir, is the legal status which this body occupies. Now, sir, what shall we do? Shall we meet in November, and sit here for months, without any authority of law, without any validity in any of our action, relying upon the probability that the Legislature will legalize our unlawful existence and our unlawful action? Sir, I do not mean to say that there may be no circumstances that would justify such an act. I do not mean to say I would deem that there is any moral wrong in our awaiting, in that form the action of the Legislature. But it is a question of prudence whether, if this body is to-day to adjourn, it should not submit to those who commissioned it, the question what further action it should take, and whether it shall take any, before it assumes what the decision of that authority will be, and goes forward to act on the assumption that its commission will be extended—to act as if its commission had been already extended. That, sir, is the consideration which, after much reflection, weighs on every mind, to prefer May instead of November, if we are not to adjourn *sine die*. When May shall arrive, the Legislative bodies will have sat, and they will say whether our commission shall be extended, and whether our work shall be submitted. If they do not say that the work shall be submitted, if they omit to pass a law to that effect, I call on the legal gentlemen of this body on the other side (if another side there be) to declare if there be any way whereby the Constitution, which we may frame or the amendments we may prepare, can ever be submitted lawfully to the action of the people of this State for adoption or rejection. Sir, which is the most prudent and most proper policy for us to pursue? Is it not more respectful to the law-making power—is

it not more modest in regard to our own action, more wise, more just—to say to those who have delegated us here, “We have been unable to complete the work we were commissioned to perform. What is your further pleasure?” Sir, that consideration, in my judgment, overrides the other consideration stated by the gentlemen, that in May we shall be verging toward the presidential election of next year. It may be that next year will not be the best time; it may be that this year was not the best time; and that to a still later period, after the presidential election shall have passed, would be most prudentially deferred the attempt to form a complete framework of government for the people of this State. Sir, I concede, in all candor and frankness, that, from the moment this Convention resolved (not by the act of any individual or set of individuals, but perhaps by the spontaneous choice of a large number of gentlemen here), to revise the whole Constitution, and to revise it, not as a matter of form, but to put every part of it under the microscope for the purposes of thorough and complete examination of all its clauses—that from that moment it became practically impossible that a new Constitution, completely new, should be framed within the time limited by the Legislature. In candor and in frankness I am bound to concede that conclusion. Sir, the smallest part of what has been undertaken by this body would well employ any legislative body that ever sat under the sun of heaven for months—the framework of government for four millions of people. Sir, it is a great work, and I concur entirely in the conclusion that it is better that that work were well done than that it were done quickly. Sir, the error of the Convention in this respect, if error it has committed, was in the extent of the work upon which it had ventured. I do not concur that there has, as a general thing, been any too much consideration of any question of an important character upon which it has attempted to act. On the contrary, sir, I do not think it possible that a prudent man should look upon the many crude and imperfect propositions which have been presented without a great deal of dismay at the possibility of such provisions being adopted and incorporated into the fundamental law of the State. Sir, if I were to indicate in all candor, in frankness and in a spirit of forbearance where I think the Convention did commit an error, a grave and serious error, it would be in this: that it failed, with no doubt the general sense on the part of the gentlemen of the majority of the propriety of avoiding as much as possible party topics and party controversy, to find itself able to extricate the proceedings and deliberations of this body from the excitement and controversy growing out of the one party measure which the majority were determined here to present. At an early period of the deliberations of this body, (abstaining from any general discussion, as I abstained through the whole two months, nearly, when this body was occupied with the question of suffrage), I ventured to suggest, in regard to the two questions adverted to by the honorable member from Oneida [Mr. Kernan], that the judicial question should

be separated, because it ought to be saved from being involved in the chances which might await the attempt to make a new Constitution; and that the other question—the suffrage question—involved in it an element on which such grave and deep difference of opinion exists in this body and among the people, and allied itself so with party controversy, that if we would rescue the work of the Convention from the perils which enveloped it, that, too, should be separated. Sir, I do not allude to this subject for any purpose of reproaching any gentleman who differs from me on this matter. I appreciate the pressure which, no doubt, was supposed to exist upon the gentlemen of the majority from an element in their party in reference to that question; and yet, I think, looking to the great work we had before us, where a tender so honorable and so liberal as was made to them by us on this subject, was offered to their acceptance, it was a mistake not to have lifted that question out of all discussion here, not to have saved the two months employed upon it, and not to have avoided (what was vastly more important) the collision of party feeling, party opinions and party convictions which are known to be inevitable upon that subject. Sir, I have no doubt that gentlemen acted as conscientiously in the matter as the circumstances in which they found themselves placed would, in their view, allow them to do; but they did not save this Convention—as we invited them to do—from the perils that threatened it in this particular, and which in the practical results, as our experience shows, have completely overwhelmed it. Sir, what are we now to do? We are to contemplate our situation as practical men. And without endeavoring to trace the fault, if fault exists, to any source, without endeavoring to look back and find out what may have been the error in the action of this body, I concede, fairly and candidly, that it is now totally impossible to complete an entire Constitution in time to submit it to the people at this election. What, then, are we to do? Sir, if we do not adjourn until May, we can at least take the other alternative presented by my honorable friend from Oneida (and I think the preferable alternative of the two), that is to say, we can avoid going beyond our commission; we can in the course of a few days perfect an amendment in respect to the court of appeals, and submit that. We can submit, also, the amendment already prepared and adopted, in regard to suffrage at this election. Sir, one word in regard to that amendment. I concur entirely with the member from Westchester [Mr. Greeley] in the view that, in so far as it provides for the purity of election, and provides an effective clause against bribery, it is a valuable improvement. I do not concur with him, however, in the opinion that in other respects it is an improvement on the present Constitution. Sir, the Convention of 1846, in a provision which was the result of a conference between the first intellects of that body, provided that in a case where a voter moves from one district to another, just preceding the election, he shall be disfranchised only so far as relates to local officers in the district into which he shall move. What have you done? You have stricken out

that wise, judicious clause, and provided that, in every such case, the voter who moves from one election district into another, or from one ward into another (and these cases are many in the city of New York, where there are nearly three hundred election districts), that in that case he shall be disfranchised, not only in respect to the local officers of the district, but as to all the general officers of the State. Men who move from one ward or one election district to another, within the specified time before the election, cannot vote for a member of Congress, or for a Governor. Sir, I hope, if we shall hereafter perfect this Constitution for submission, we shall correct that error. It is a grave and serious error, disfranchising at least twice as many as the whole class whom this body admits to the franchise, and doing it without the slightest pretext of necessity, without the slightest just occasion. I hope we shall revise that provision, if ever we submit this proposed Constitution to the people. Sir, taking it as it stands, I do not think we have made, in regard to that article, much progress or much improvement; improvement in some respects, retrogradation in other respects. At the same time, that article does contain a provision which the majority of this body have an anxious desire to see ingrafted upon the public law of this State, and I, for one, am willing to give them every facility for the submission of that question separately to a vote of the people of this State, and I am ready to abide by the result of that vote, be it what it may. I think, therefore, sir, that, considering all the circumstances in which we are situated, if we will perfect an amendment in regard to the court of appeals, and then proceed to submit the suffrage article already prepared, at this election, and adjourn *sine die*, and say to our constituents, "We render back to you our commission, and without any presumption or pre-determination of ours as to your action, without any effort on our part to influence your choice, we wait to receive your further commands," we shall most completely have performed our obligation and fulfilled our trust to our constituents.

Mr. VAN COTT—It seems to be the general consent of the Convention that the time has arrived when it is necessary for us to adjourn, or to take a recess. The question is whether it shall be an adjournment or a recess. My friend from New York, who has just taken his seat [Mr. Tilden], has made the point that the commission of this Convention will expire with the day of the November election. Nevertheless, he proposes that we shall take an adjournment until May. Well, sir, if our commission expires in November, what authority have we to adjourn until May? I take it, sir, that our commission is under the Constitution and from the people, and not from the Legislature. I understand it, sir, that this Convention does not derive its existence from the Legislature, and that its powers are in no degree measured by the Legislature. We came here under the provision of the Constitution. We derive our commission from that. Our powers are to be measured by that. They cannot be limited, they cannot be extended by any act of the Legislature. Now, sir, if it be true, as the gentleman from New York [Mr. Tilden] claims, that our ex-

intense terminates with the period prescribed by the act of the Legislature for the submission of the Constitution, then I say we are *functus officio*, and it is out of the power of the Legislature to rehabilitate the Convention. If we need to be revived, it is not in the power of the Legislature to revive us, because the Legislature itself cannot call a Convention to change the Constitution, and cannot appoint delegates. We, therefore, are, and will continue to be, under our commission and under the Constitution, or we are past all hope of resuscitation by any power of the Legislature.

Mr. TILDEN—If the gentleman will allow me, I said that our power to go on and complete the work without a further legislative act undoubtedly had perished.

Mr. VAN COTT—That is the very proposition I am considering; because, if we have our existence as a Convention, by force of the Constitution, we have the power to go on and do the whole work as a Convention under the Constitution and under the commission we derive from it and from the people, and not under any authority we derive from the Legislature. Our power to go and complete our task certainly cannot be impaired by the mistaken guess of the Legislature, that it could be completed before the November election. The gentleman is not quite accurate perhaps in expressing his own meaning. It may be very true that we cannot submit our work to the people after November, without the aid of an enabling act, because the Legislature has control of the machinery of election, and it may be that that machinery must be put in motion by the Legislature.

Mr. TILDEN—My friend is an excellent lawyer, and I would like to know his opinion on this point: suppose the Legislature should refuse, or omit to pass an enabling act, as to whether our work would ever be submitted, and if so, in what manner and by what authority and in what mode the machinery of an election to pass upon it could be brought into existence.

Mr. VAN COTT—I would answer the gentleman by saying that if the Legislature should omit to do its duty, the part of our work performed before November and the part performed after November will be in precisely the same predicament. What we have done up to this time has been done confessedly within our commission. What we shall do after that time, if I am right, will be equally within our commission. Yet it is, nevertheless, true that all our work will fail if the Legislature fail to perform its duty in passing an enabling act, and that, I think, answers the whole of the gentleman's argument. Now, sir, some fault has been found with the method which has been pursued in the revision of the Constitution. Well, sir, if the method has been faulty, whose fault was it? We came here not only to do the work, but to do it by some method, and the question met us on the threshold, what method we should pursue in performing our work. Now, the gentleman from New York says it was perfectly apparent from the beginning—as apparent as now—that if we undertook the revision of the whole Constitution we could not submit our work in time for the November election. He had the sagacity to fore-

see what I did not; therefore the duty was chargeable upon his conscience and not upon mine, to suggest to the Convention the predicament in which we should be, and to suggest the true method by which we could perform our work. We had no such suggestion from any gentleman on the other side.

Mr. TILDEN—If the gentleman will allow me one moment, I will say that my remark extended only to the case that we should attempt, not as a matter of force to go over all the parts of the Constitution, but rather to revise and change practically all the parts. I remember very well that the chairman of the Committee of Sixteen expressed the opinion that with reference to most of these provisions, while it was necessary to go through the form of revising them, that revision would be merely formal—that they were not to be subjected to a full process of reconstruction.

Mr. VAN COTT—The gentleman from New York and myself were both on the Committee of Sixteen, and we concurred in presenting a report, made unanimously by that committee, submitting to this body the method by which the Convention should work; and we did not have from my friend from New York, at that or any other time, a suggestion that we could do less than appoint committees on all the subjects embraced in the Constitution, and pursue the mode which was adopted and has been followed ever since. Now, sir, no two gentleman in the Convention could agree when we came here, as to the limitation upon our work. We have heard it repeated over and over again, during the sitting of this Convention, that this or that particular subject which was under discussion was the one which interested the people, and which led to the call of the Convention. We have had that from the beginning to the end of the chapter, from A to Z, every time a new subject was introduced. But the Convention, as a body, did not see things in that light. By general consent we thought we were sent here to serve the people, by examining carefully the whole fundamental law and improving it in every part. I am by no means satisfied that we could have pursued any better method; but however that may be, it is very easy to be wise after the event. It is very easy to prophesy after things have come about. It certainly is not in very good taste, at this time, and in this situation of our business, for gentlemen to claim a prophetic spirit which was not visible at the proper prophetic time, and to show how we could have done better, and where we should have been if we had adopted a different mode of procedure. Now I come to another question, that on the amendment of my friend from Oneida [Mr. Kernan], and the amendment of my friend from New York [Mr. Tilden], I do not understand that this Convention has authority to sit continuously, and from time to time to drop, as the express train drops a bundle of newspapers, an amendment here and an amendment there, to be submitted to the people. I suppose that when we submit any work to the people it will be at the end of the session. I suppose we must submit our work after all our work has been done; but I do not agree either to the expediency or to the right of a separate sub-

mission of portions of our work from time to time as we are in session, and as our work proceeds here. It is said by my friend from New York [Mr. Tilden] it will be more respectful to the people if we should adjourn over until May. I do not see how we shall pay any particular respect to either people or Legislature by adjourning to May instead of November. I do not see any disrespect to either people or Legislature involved in an adjournment to November. The people unquestionably sent us here to do this work. The Constitution provided for it. The people voted for it. The people elected us and sent us here. We stand charged here, by their appointment, under their commission, and by our oath of office to do this work. I think it incumbent upon us to continue our work until we have completed it—taking for public reasons, and for overruling private reasons, if you please, a reasonable recess—that we may resume our labor under more advantageous circumstances, and then proceeding and completing it. Then the Legislature, and then the people, will say that we have performed the work with which we have been intrusted. When we have executed our commission the Legislature may provide—not in 1869, as the gentleman proposes, or as may be involved in his proposition, but in the session of 1868—the enabling act for the proper submission of our work to the people. I have not a word to say by way of complaint of any member of this Convention. I came here as untrammelled as it was possible for any human being to be, by party considerations. I came here to work for the people of this State, which is more than any party in the State—the whole collective people, the sovereignty of the State, and to do the best I could for them. I have met here gentlemen of all shades of politics, and I have labored with them as I think they have labored with me, to do the best work we could for the people. I blame nobody, but I accept the fact that our work is not done. I feel bound to-day and on all occasions to claim that we shall go on and complete our work at the earliest practical period. Then our work and our responsibility will cease; and then it will be for the people to take up what we lay down and say whether our work is worthy of approval or of disapproval.

Mr. CHESEBRO—I do not like to have the question taken on this proposition without saying a few words to express my views upon the resolution offered by the gentleman from Richmond [Mr. Curtis] and upon the amendments of the gentleman from Clinton [Mr. Weed] and the gentleman from Oneida [Mr. Kernan]. It seems to be determined by the majority that there is to be an adjournment of this body to some future period for the purpose of completing its labors. That is inevitable, unless the proposition of the gentleman from Oneida shall be adopted by the Convention. I am in favor of the resolution proposed as a substitute by him for reasons that I will state in a very few words. In the first place, I am in favor of it because it was evidently contemplated by the Legislature, which passed the act under which we are here assembled, that this Convention might submit to the people at the next November election any amendment of the

Constitution which in their wisdom they should see fit to present. The express language of the act of the Legislature is that we may submit either a Constitution or amendments to the present Constitution, and that we *shall* submit one or the other at the fall election. When this Convention met I submit that there was not, in the minds of the people, any pressing necessity for an amendment to many of the provisions of the present Constitution. There were but two which had caused any serious consideration or agitation before the people; and those were the question of extending the elective franchise to that class of the colored men of our State now disfranchised, and the question of the reform of the judiciary system so far as concerns the organization of the court of appeals. I insist it is the duty of the Convention to submit to the people those two propositions at the coming election. I should be willing, then, to adjourn *sine die*. But rather than not have these two propositions submitted by the Convention, I should be willing to join the members of this body and adjourn this Convention until May next, and leave our action in that respect subject to the approbation of the Legislature at the next session. But what will be the effect of adjourning the Convention to the second Tuesday of November? The gentleman from Westchester [Mr. Greeley] says we can meet on the 10th of November and complete this work by Christmas. That will give us but very little more than a month of working days to perform this labor. Now, I say that either the gentleman did not fully consider the proposition which he has thus stated, or that he is entirely mistaken in his judgment. It is unnecessary that I should refer to the numerous unconsidered articles now lying on the general orders of this Convention, because that has been done by the gentleman from Cayuga [Mr. Rathbun]; but I think we are all satisfied that the work of the Convention is *not now one-half done*. There remains on the orders of this Convention, labor enough now, if the Convention should pursue its labor in the same manner it has hitherto, to consume at least two months, if not three, in the completion of the Constitution we are endeavoring to frame. Now, what will be the effect of adjourning until November. We shall stay here until after the 1st of January, and during the whole of January, before we shall complete this instrument. Do gentlemen understand the responsibility they assume when they say they will do that—that they will come here and sit while the Legislature is in session, and the expense which will be involved in finding another place in which this body can sit? Aside from that, it is not to be disguised that this Convention cannot convene here on the second Tuesday in November with any probability of having a quorum to pursue its labors. A large majority of the Convention are professional men, who have for the last four months substantially abandoned their business for the purpose of attending to the business of this Convention. They cannot come back here in November, the busiest season of the year, and pursue their labors, and necessarily we shall be as we have been for the last week, without a quorum,

Now, what is the objection to the submission of any one of these articles, one or more, separately, to the people for their adoption? The gentleman from Westchester [Mr. Greeley], and the gentleman from Kings [Mr. Van Cott], are opposed to the submission of those articles separately; but they give no good or substantial reason why it should not be done. It has been done ever since the organization of the government. There has been a separate submission of various amendments to the Constitution of the United States and to the Constitution of the State of New York, from the organization of the national government; and the people of the State of New York have voted on these separate articles as they have been submitted, and in that way amended the fundamental law. Two months of the time of this Convention, nearly, was consumed in the perfection of the article on suffrage. There are many of its provisions from which I entirely dissent; but I think that article, together with so much of the article on the judiciary as relates to the court of appeals, can be perfected by this Convention in time for us to adjourn by the 10th of October, and submit these two questions separately. Further than that, the principal question in this article on suffrage, which, to some extent, agitated the public mind before we assembled here, was the one on extending the franchise to a class of citizens now disfranchised. I should be willing to submit that simple proposition in connection with the proposition amending the article on the judiciary, so far as it affects the court of appeals, to the people separately. That can be very easily done by a simple amendment, striking out that clause of the Constitution which now prohibits that class of citizens from the exercise of the elective franchise. I submit that there has been undue reflection in this debate, on the action of the Committee of Sixteen. As one member of that committee, remembering well the discussion which took place in that committee on its action, I beg leave to disclaim that they are in any degree whatever responsible for the action of this Convention to this time. When that committee met, this question which principally concerned them, was whether or not they should submit to the Convention a proposition for the appointment of committees on all the articles in the present Constitution. It was suggested that the committee had no right to undertake, of themselves, to say what articles of the Constitution should be submitted to this Convention for its consideration and amendment. They therefore provided for the appointment of a committee on each one of these articles; the committee themselves agreeing, by a large majority, that there were but few articles in the Constitution which really required any amendment. And they expressly instructed the chairman of that committee, Judge Harris, when he submitted their report, to say to the Convention that it was not to be considered, that our recommending the appointment of these committees that the committee was in favor of the amendment of all the articles of the Constitution, but that out of deference to the Convention, they had provided for the appointment of a committee on each one of these articles expressing the opinion that there were but few of

them that really required any action. And the Convention will remember that that proposition was expressly stated by Judge Harris when he submitted the report of the Committee of Sixteen. Now, I am unable to see why there should be any objection to the submission of the questions of the organization of the court of appeals to the people at this election. We shall then have accomplished something at all events; whereas if we adjourn over until November, or adjourn over until May, without submitting at this election any proposition, we shall, in one point of view, accomplish literally nothing, except to expend the money of the people of the State and our own time. Therefore if we give to the people this, which is one of the most important amendments, which will lift our judicial system out of the mire in which it is now floundering, we shall at all events have made an apology to the people for the length of time we have consumed and the amount of money which has been expended. But if we do not, if we adjourn this Convention over either until November or until May, without providing for submitting anything to the people this fall, I submit that from the time of the election in November next, if we attempt to meet, we shall be merely a revolutionary body. We shall be a body without authority of law, assuming to alter the fundamental law of the State. I wish to be in no such position as that. For these reasons I am in favor of the proposition of the gentleman from Oneida [Mr. Kernan], that is of submitting to the people at the coming election, separately, an article reforming the organization of the court of appeals, and so much of the article on suffrage as relates to extending franchise to colored men not now authorized to vote, and then adjourning *sine die*, which I prefer; or, if the majority insist, then adjourning to May next, subject to the approval of the Legislature at its next session.

Mr. BECKWITH—I regret to put myself in the position of disagreeing with the gentleman from Oneida [Mr. Kernan] or the gentleman from New York [Mr. Tilden], because I know the reputation of those men as lawyers, and I, therefore, feel somewhat embarrassed in giving my own opinion adverse to theirs. In our work upon the Constitution I do not believe that we received our power from the Legislature—that we received our commission from that body. On the contrary, I agree with the gentleman from Kings [Mr. Van Cott] that our commission is derived from the Constitution of 1846 and the vote of the people declaring that there should be a Convention. I desire to call the attention of the Convention to that article of the Constitution. It reads thus:

"At the general election to be held in the year 1866, and in each twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, 'Shall there be a Convention to revise the Constitution and amend the same?' shall be decided by the electors qualified to vote for members of the Legislature," etc.

You will observe that by this article of the Constitution it became the imperative duty of the Legislature to provide for the submission of this question to the people, "Shall there be a Convention to revise the Constitution and amend the same?"

and when they submitted that to the people, it then remained for the people to determine whether there should be a Convention or not; and when the people determined that there should be a Convention, that question was decided and it only remained for the Legislature to provide for the election of delegates. You will observe that the language of this section is "to revise and amend." Evidently it was the intention that the whole Constitution should be submitted to the Convention, to revise and amend. The entire Constitution was to be looked over, to see what articles could be properly revised and amended. It is not to "revise the Constitution or amend the same," but to revise "and" amend. Again, what power had the Legislature when the people had decided to amend the Constitution? Simply the power given by this article, which reads as follows:

"And in case a majority of the electors so qualified, voting at such election, shall decide in favor of an election for such purpose, the Legislature shall provide by law for the election of delegates to such Convention."

That was all. They were merely to provide for the election of delegates to such Convention. And when the delegates were elected by the people for the purpose of revision and amendment of the Constitution, then they were clothed with the power to do that duty. I have no doubt in my own mind that that power remains after the election day in November next. The Legislature had no power to limit the time during which we should act. If they had the power to limit it to the 1st of November, then they had the power to limit it to the 1st day of August. They have gone beyond their power in that particular, in my judgment, although they have attempted so to limit it. I cannot agree that at that time our power is gone—that our commission will be *functus*. I believe it was the intention of the framers of this article to leave it to the Convention to submit their doings to the people; that the Convention itself should provide for this submission, and not the Legislature. On looking into the language of the Constitution, therefore, you will see that all the power given to the Legislature by this article was, after the people had decided to have a Convention, to provide for the election of members of the Convention, nothing more. When they limited, as claimed by some gentlemen, the time to the first of November, they stepped beyond their duties, and attempted what they had no power to do. I have no doubt in my own mind that our action after election day will be just as valid as our action to-day. But I am opposed to the motion of the gentleman from Oneida [Mr. Kernan] for various reasons. He says that when the question whether there should be a convention or not was agitated, two questions only were thought of, or considered by the people; one was the relief of the court of appeals, and the other was the extension of the elective franchise. These two questions were very important ones. But they were not the only questions, that occupied the public mind. If gentlemen will reflect a moment, they will be satisfied that other questions arose in the minds of the people of this State. In my neighborhood an-

other very important question was agitated before the election, in proof of which I will refer to the fact that the last Senate voted a committee to investigate frauds in the management of the canals, and it was the belief of the people that the contract system was altogether wrong; that instead of being a benefit to the canals, it was, in its practical working, a fraud upon them. This subject of the management of the canals and the finances of the State, were questions which were in the minds of the people when they called this Convention, especially the question of the finances of the State relating to the canals. It was said, as I am informed, all over the State, that the canals were defrauded. Many considered the canal policy in many particulars, unwise. It is a system consisting of about five different boards, having different duties to perform and rendering it complicated. Then we had State officers, engineers, and commissioners of the canals, each of them independent of the other, not acting in harmony, making it almost impossible to trace responsibility anywhere. This question is one of great importance to this State; and I have no doubt the people had it in mind when they determined to have a Convention to revise the Constitution. But this is not all. I know from the reading of the papers published in the city of New York, that the question of the government of the cities was one which agitated the minds of the people of this State, especially in the city of New York. I do not suppose that the people of this State, and especially the people in the city of New York, will be willing to leave the Constitution in that respect as it now is. They would be dissatisfied if we introduce into the Constitution no provision in regard to the government of cities. Is not that a question of very grave and vital importance, and will it not occupy the attention of this Convention a very long time to settle it so as to do full and ample justice to the cities? Again, another question which agitated the minds of the people in my neighborhood prior to the election of the Convention was that of legislative frauds. Every mail brought up to us the cry that the Legislature was corrupt. I do not mean to say that it was founded in truth; but when there is so much smoke there must be some fire. The people felt that something must be done, if possible, to correct this great and growing evil. How is it to be corrected? We know that near nine-tenths of the time of the Legislature of this State has been occupied in special local legislation. The Convention of 1846 intended to provide for this evil; but they left open a door in which the entire evil remained, if it was not increased. In article 8, section 1, they provided:

"Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be obtained under general laws."

The last clause of that part of the section which I have read, has operated to defeat, the good intended to be secured by the first clause. The framers of the Constitution of 1846, evidently intended to get rid of a large portion of the special legisla-

tion, that had occupied so much of the time of the Legislature. In this they failed. That is one of the growing evils which the people want remedied. Nearly nine-tenths of the time of the Legislature is confined to the subject of special or local legislation; and nine-tenths, as I verily believe, of the corruption of the Legislature, if there has been any, has grown out of this kind of legislation. If such be the case, then it is certainly a question of the utmost importance, and one which I am confident the people had in mind when they directed this Convention. They intended that we should do something to amend the Constitution in this particular, to prevent this corruption; that we should provide for general laws, and get rid of this special and local legislation which has occupied so much of the time of the Legislature and contributed so largely to corruption, as many believe. If we submit to the people but two amendments, that in reference to the court of appeals and that in reference to the elective franchise, and leave all these other subjects where they were, I do not believe the people will be satisfied with our action here. On the contrary, I believe that they intend that we shall revise the Constitution and amend the same wherever it needed amendment, to get rid, if possible, of these evils, and to give them a Constitution that should protect all the rights and interests of the people of the State. This cannot be done unless the subject of the management of the canals is acted upon, and some provision is made to secure their proper and economical management. If the canals are left to be managed, as they have been for a few years past, by so many boards and State officers, each independent of the other, I do not believe the people will be satisfied with our action. The mismanagement of the canals must be looked into and corrected. The corruption of the Legislature, that has been charged upon them, should be prevented in the future. I do not intend to charge corruption, but it should be guarded against by some provision in our fundamental law. We have had petition after petition brought in here against donations to charitable sectarian institutions. I do not say the complaints are well founded; but I agree with the gentleman from Oneida [Mr. Kernan] that it leaves open a door to expenditures which may be improper. Certainly it has a tendency to produce jealousy among the different religious sects of the country. One sect thinking that another sect gets more than its share. I, therefore, most heartily concur with that gentleman upon that subject, that it may be wise to cut them all off, so as to get rid of this jealousy. This is a subject we have not acted on. Then there is the subject of charities, education, and others of equal importance, upon which I think the people expect us to act, and to introduce into the Constitution fundamental principles which shall hereafter regulate or control the legislation of this State.

Mr. S. TOWNSEND—I mainly concur with the gentleman who has just sat down, in reference to this discussion, and as to the mismanagement of the Legislature in the proceedings of that body. Reference has been made to the Constitution of 1846 under which we meet. My opinion is, that when the Legislature had provided for the election of delegates, their power entirely ceased;

and that this body is acting entirely independent of them; and I might almost say, independent of any other consideration than what they might deem best for the public interest. Whether we adjourn to-day to meet here in the immediate future, or the distant future, or adjourn *sine die*, is entirely a question for the consideration of gentlemen. With several of the gentlemen who have risen before me, I agree that we have all learned something from our deliberations for the last three or four months. I expected to hear the gentleman from Kings [Mr. Van Cott] when he spoke so appropriately upon the subject, say that he had learned the connection between the canals and railroads; a question upon which he took occasion in an early day of the session to call me to order when I undertook to connect the two subjects together. I have no doubt that he is now very willing to admit that there is a connection, although he called me to order upon that point. It is within the knowledge of the Convention that I drew upon myself some remarks, perhaps of censure, by laying upon the table of our body, on the 6th of June, a proposition that you should appoint a member from each judicial district, as a committee to consider whether, under that section of the Constitution that provides that every twenty years there shall be submitted to the vote of the people the question of a Constitutional Convention, we were constitutionally elected. The whole point at issue was, whether the majority of the "electors qualified to vote for members of the Legislature" did in November last past vote to call a Convention. The returns show, as I understood it, that there were seven or eight thousand votes short of the necessary number. The Convention, however, did not choose to call the subject up; and I will make the explanation—hardly an apology—to show why I did not. I talked with various gentlemen, and desiring to consult the best sources of authority on the subject, I wrote to Judge Marvin, who drew that section of the Constitution of 1846, desiring to know precisely what he meant. After a long interval I received a reply, in which he stated that his memory of the subject was not sufficiently distinct to enable him to state precisely what it meant, and he thought the Convention had better look into the article and change it, for undoubtedly the language was ambiguous. I was, therefore, much pleased to hear the gentleman from Westchester [Mr. Greeley], who had moved very promptly to lay my resolution upon the table, introduce an amendment covering that very point, stating that he had taken care to guard against that very difficulty in the amendment he had drawn, showing that he had also learned something. I heard, in the days of the Convention of 1846, one of the great minds of that body, now gone, say that they were a body of civil revolutionists; and I remember seeing the shudder that ran along the benches among some of the octogenarians upon the declaration of those words at that time. He said we were called without authority of the Legislature, without authority of the Constitution of 1821. Not so in our case. We took care to provide that there should be authority every twenty years, and oftener at the discretion of the Legislatures, if the people,

by a majority of votes—not by a fragmentary vote of ten or fifteen thousand men—agree to call a Convention to amend the fundamental law—a majority of a certain prescribed vote, which may be safely estimated now at over 400,000 votes. And however true the declaration may have been then, that they were a body of revolutionists, I trust that we are not. If we choose we may sit here the whole winter. That is a question of responsibility that rests upon us, and we have a right to say what we will do, and what will be for the best interests of the people in that regard. For one I think our deliberations have gone to show that the convening of this body was not needed. Gentlemen say we must do some one thing before we go—upon the judiciary question for instance. Perhaps silently and quietly that was the covert influence that brought this body together. The former Convention yielded to the people the election of their judicial officers. We may have gone too far and made too many of our officers elective. I remember saying then that I feared if we required the election of so many officers we should “fatigue the people.” We are now proposing that some of these shall be appointive, and to get rid of as many of them as we can. I was very glad the other evening, to learn that the Convention had rejected the idea of raising again a thousand of our citizens to the office of inspectors of merchandise. Something must be done upon the judiciary, as a separate matter, to meet the proper expectations of the people. I have done the best I could, and I trust every other member of the Convention has done the same, to obtain information, as far as possible, upon this point. In some particular localities there has been considerable complaint; and there may have been exceptional appointments or selections made; but it is not seen to any great extent—I think I am able to say—in the interior of the State. From the best sources of information I have been able to consult, I learn that the bar in the interior of the State are responsible for the judiciary, whatever they are; that their nominations are respected there; and that they have endeavored to nominate their best men. I do not suppose it is so in the city of New York. Yet, sir, I know not why the legion of lawyers there (some say 5,000), cannot exercise a similarly salutary influence in the nominating committees. I am told that in the western portions of the State the elective principle has worked well, and that good men are selected as a general rule. And when a man has given satisfaction, he will be re-elected if he wants to be. Again, sir, we hear a good deal said about the court of appeals. I have asked gentlemen acquainted with the subject, whether a great deal of the embarrassment that now exists, from lumbering up the docket of the court of appeals, could not be remedied by the Legislature; I have asked them whether appropriate penalties upon appeal, in the form of fees, or whether limiting in some way the cases which could be carried up, with reference to the amount in litigation, or increase of costs, might not tend to relieve that embarrassment. I see that our judiciary in New York costs about half a million of dollars a year, and I have thought that by limiting appeals, part

of that expenditure might be mitigated. There is a way by which a remedy can be easily reached, through the Legislature, as indeed most of these evils that we hear of could be reached through the Legislature, at any rate by two successive acts, and the approval of the people. Fifty times it has been asserted here that we are making a Constitution irrevocable for twenty years. Sir, we are doing no such thing. We are acting for three or four years. In two years, if successive Legislatures choose to pass enactments and the people choose to ratify them, the Constitution we frame may be amended. That was the way the amendment was made with reference to the nine million law. Why was that forced through? Because the court of appeals had declared that it was illegal under the construction of the Constitution of 1846. Large offers were made and accepted with reference to the improvement of the canals. These offers I have happened to know were made at a risk, or at a very large advance. After the matter had come before the court of appeals, and they had made their decision, then, as a matter of necessity, the Legislature submitted this proposition to the people of the State, and there was an amendment of the Constitution adopted, and the debt was postponed, and a nine million loan was passed, which led to a wasteful expenditure of money. I was told that from nine to twelve millions were expended for services which might have been obtained for seven or eight. But what I meant mainly to say when I rose, was that this is a matter for this body to consider without regard to the Legislature. The only thing remaining for them is to make the necessary appropriation; for, perhaps, as a technical matter, the appropriation for the support of this body would probably come from them. But we are a body entirely independent of the Legislature—a body created under that clause of the Constitution of 1846 which has been read here. If we received a sufficient vote—and we have deemed the vote sufficient—we must follow our own judgments now. It is a question for us to decide, whether to adjourn to some future time, soon to occur, or for some longer period. My own belief is that the better course would be for us to go on with our work. If we have perfected, as the gentleman from Westchester thinks we have, the financial article, the time has been well spent, for a much better understanding of the subject is possessed by us now as a body, and of course through our influence, by the State at large, than at the beginning of the session. We propose to make a verbal amendment by which the Governor's veto shall be made effectual, so that a smaller vote than passed the original bill may not be sufficient to override the veto. Let us submit these matters either separately or together, so far as we have decided upon them, to the people, and adjourn. Or, if need be, if in the opinion of the majority of the Convention we can do still more good by continuing longer, if our services will still be valuable to the community, let us continue in session. And if gentlemen wish continually to be absent from the Convention attending to their private duties, let a rule be adopted, making a quorum, less than now required, sufficient, so that with the presence, say of forty

members, for instance, we may proceed. I do not know but we might go on with a smaller number, and have some very good speeches and reach desirable action. I am, therefore, opposed to all these propositions to adjourn. I, myself, and others who accepted this office, were, or should have been, cognizant of the responsibility we assumed; and we should allow no business to intervene between public duties like these. Our call is undoubtedly a public call, and admits of no excuse but illness. If we will fulfill our trust and go on with our work, I believe, in twenty or thirty days we shall be able to complete all that is needed and give it to the people, and although ten or fifteen days is a very short time for its consideration by them, yet that may be acceptable, as they no doubt have in some degree been aware of our daily progress. We have therefore twenty days yet for deliberation; and I shall vote against all propositions to adjourn until otherwise enlightened.

Mr. CURTIS—I move the previous question on the pending amendment and upon the original resolution.

Mr. E. BROOKS—I hope my colleague will withdraw that demand, and let us be heard at length upon this question.

Mr. CURTIS—Under the circumstances I shall feel compelled to insist upon the previous question.

Mr. DEVELIN—I call for the ayes and noes. A sufficient number seconding the call, the ayes and noes were ordered.

The question was put upon ordering the main question, and it was declared carried, by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Baker, Barker, Beadle, Beala, Beckwith, Bell, Bickford, E. A. Brown, Carpenter, Case, Cheritree, Cooke, Curtis, C. C. Dwight, Ebby, Ely, Endress, Evarts, Farnum, Flagler, Folger, Fowler, Francis, Goodrich, Gould, Graves, Hadley, Hammond, Hand, Harris, Hitchcock, Houston, Hutchins, Kinney, Landon, M. H. Lawrence, Lee, Ludington, Merritt, Merwin, Miller, Opdyke, C. E. Parker, Pond, President, Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, L. W. Russell, Seaver, Silvester, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—71.

Noes—Messrs. Barnard, Barto, Bergen, E. Brooks, Burrill, Cassidy, Champlain, Chesebro, Cochran, Colahan, Corning, Develin, Duganne, Garvin, Greeley, Gross, Hatch, Hitchman, Jarvis, Kernan, Ketcham, Larremore, A. R. Lawrence, Livingston, Loew, Lowrey, Magee, Mattice, Monell, More, Morris, Murphy, A. J. Parker, Pierrepont, Potter, Robertson, Rogers, Roy, Schell, Schoonmaker, Strong, Tappen, Tilden, S. Townsend, Weed, Wickham—46.

The question was put on the amendment of Mr. Kernan, and it was declared lost, by the following vote:

Ayes—Messrs. Barnard, Barto, Bergen, E. Brooks, Burrill, Cassidy, Champlain, Chesebro, Cochran, Colahan, Corning, Develin, Garvin, Hatch, Hitchman, Jarvis, Kernan, Larremore, A. R. Lawrence, Livingston, Loew, Lowrey, Ma-

gee, Mattice, Monell, More, Morris, Murphy, A. J. Parker, Pierrepont, Potter, Robertson, Rogers, Roy, Schell, Strong, Tappen, Tilden, S. Townsend, Weed, Wickham—41.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Baker, Barker, Beadle, Beala, Beckwith, Bell, Bickford, E. A. Brown, Carpenter, Case, Cheritree, Cooke, Curtis, Duganne, C. C. Dwight, Eddy, Ely, Endress, Evarts, Farnum, Flagler, Folger, Fowler, Francis, Goodrich, Gould, Graves, Greeley, Gross, Hadley, Hammond, Hand, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Landon, M. H. Lawrence, Lee, Ludington, Merritt, Merwin, Miller, Opdyke, C. E. Parker, Pond, President, Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, L. W. Russell, Schoonmaker, Seaver, Silvester, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—76.

The question was then put on the amendment of Mr. Weed, and it was declared lost, by the following vote:

Ayes—Messrs. E. Brooks, Barrill, Cassidy, Chesebro, Cochran, Corning, Evarts, Garvin, Hatch, Jarvis, Larremore, Loew, Lowrey, Magee, Mattice, Monell, More, Morris, Murphy, Pierrepont, Robertson, Rogers, Roy, Schell, Schoonmaker, Strong, Tappen, Tilden, Weed, Wickham—80.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Baker, Barker, Barnard, Barto, Beadle, Beala, Beckwith, Bell, Bergen, Bickford, E. A. Brown, Carpenter, Case, Champlain, Colahan, Cooke, Curtis, Develin, Duganne, C. C. Dwight, Ely, Endress, Farnum, Flagler, Folger, Fowler, Francis, Fullerton, Goodrich, Gould, Graves, Greeley, Gross, Hadley, Hammond, Hand, Harris, Hitchcock, Hitchman, Houston, Hutchins, Kernan, Ketcham, Kinney, Landon, A. R. Lawrence, M. H. Lawrence, Lee, Livingston, Ludington, Merritt, Merwin, Miller, Opdyke, C. E. Parker, Pond, Potter, President, Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, L. W. Russell, Seaver, Silvester, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—85.

The question was then announced to be on the original resolution.

Mr. WEED—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded to call the roll. The name of Mr. Cassidy was called—

Mr. CASSIDY—I beg to be excused from voting, for reasons which I shall state. I am ready to accede to the decision of the majority, that it is impossible to submit a Constitution in November, and also to unite in any proposition to complete the work, but I desire that our action should be according to law. This Convention was constituted by law, and its proceedings must be conducted with the sanction of law, else all is confusion and disaster.

Mr. ALVORD—I rise to a question of order. The gentleman is not giving an excuse; he is making an argument.

Mr. CASSIDY—I am giving an excuse for not

voting for an adjournment that is against law.

Mr. ALVORD—I must object to the gentleman's proceeding in that way.

The PRESIDENT—The Chair did not hear the gentleman's remarks so far, and he will be permitted to proceed until the Chair can judge whether he is speaking in order.

Mr. CASSIDY—It is not necessary for us to assert or discuss the question of the right of this organic body to act in its sworn capacity, as representatives of the whole people without reference to the legislation. It is evident that we need the sanction of law to meet and to provide a place of meeting—to submit our work at a designated time, to provide the ballot boxes, to make a canvass of the result by the State officers, and to declare it, and the local boards—and without this concurrence of the existing State organization, our course will be revolutionary and disorderly, and instead of elevating the vigor and tone of government by our work, we shall demoralize it by our example. The mover of this resolution [Mr. Curtis] has spoken of the "remorseless jealousy of the people;" and he has confessed that in passing over this election, he proposes to pass over the next also and that the Constitution shall never be submitted to a full vote of the electors.

Mr. HAND—I rise to a point of order. The gentleman is not making an excuse, but replying to arguments.

Mr. CASSIDY—I have not alluded to any arguments, except the "remorseless jealousy of the people," which the gentleman [Mr. Curtis] deprecates.

Mr. CURTIS—The gentleman has entirely misapprehended the phrase which I used. He must be perfectly aware that I could use no such phrase.

Mr. CASSIDY—If I am compelled to vote, I shall vote no.

The question was put on excusing Mr. Cassidy from voting, and it was carried.

The SECRETARY continued with the call of the roll, and the resolution was declared adopted, by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Baker, Barker, Beadle, Beale, Beckwith, Bell, Bickford, E. A. Brown, Carpenter, Case, Cooke, Curtis, Duganne, C. C. Dwight, Eddy, Ely, Endress, Everts, Farnum, Ferry, Flagler, Folger, Fowler, Francis, Fullerton, Goodrich, Gould, Grant, Graves, Greeley, Hadley, Hammond, Hand, Harris, Hitchcock, Houston, Hutehins, Ketcham, Kinney, Landon, M. H. Lawrence, Lee, Ludington, Magee, Merritt, Merwin, Miller, Opdyke, C. E. Parker, Pond, President, Prindle, Prosser, Rathbun, Reynolds, Rogers, Root, Rumsey, L. W. Russell, Seaver, Silvester, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams.—78.

Noes—Messrs. Barnard, Barto, Bergen, Brooks, Burrill, Champlain, Chesebro, Cochran, Colahan, Corning, Devellin, Garvin, Gross, Hatch, Hitchman, Jarvis, Kernan, Larremore, A. R. Lawrence, Livingston, Loew, Lowrey, Mattice, Mc-

nell, More, Morris, Murphy, A. J. Parker, Pier epont, Potter, Robertson, Roy, Schell, Schoonmaker, Strong, Tappen, Tilden, S. Townsend, Weed, Wickham.—40.

Mr. ARCHER—I offer the following resolution:

Resolved, That the Secretary of this Convention be instructed to forward to such delegates as may request him so to do, their respective quotas of documents and debates now printed, and such as may be printed from time to time; also the files, now on the table of members, the annotated Constitution, when bound and ready for delivery, the letters for delegates and the papers containing the debates up to the present adjournment.

Mr. MORRIS—I would like to add an amendment to the effect that letters also be sent to members.

Mr. ARCHER—I accept the amendment.

The question was put on the resolution, and it was declared adopted.

Mr. GREELEY, by unanimous consent, presented a remonstrance of Henry L. Stuart and others of the Medical College of New York, against the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. HATCH—I desire to give notice that when the Committee of the Whole on the finances next meets, I shall move the following as a section in the financial article:

After the payment of all the debts for which the canal revenues are now pledged, and after all advances with interest thereon, heretofore or hereafter made for canal purposes, shall be repaid, no more or greater tolls shall ever thereafter be imposed, charged or levied upon property transported on the canals, than shall be sufficient for ordinary repairs and further necessary improvement.

I want to say that that is concurred in by two-thirds of the Committee on Finances. My only object in bringing it forward now, is to call the attention of the press and public to its consideration before the Convention meets again.

Mr. DEVELIN, by unanimous consent, presented a remonstrance of Manhattan College of the city of New York, against the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. ALVORD—I ask the unanimous consent of the Convention to move at this time that the report of the Committee on the Finances of the State, so far as the same has progressed in Committees of the Whole, be printed and transmitted by the Secretary to the members of the Convention.

Mr. RUMSEY—I propose to amend by inserting in the same resolution, the report of the Committee on the Powers and Duties of the Legislature.

Mr. ALVORD—I accept that amendment.

Mr. HAND—I move to amend so as to include also the newspapers until the debates are finished.

Mr. ALVORD—I accept the amendment.

No objection being made, the resolution as amended was adopted.

Mr. TAPPEN offered the following resolution:

Resolved, That the committees whose reports have not yet been made to the Convention, have leave to sit during the recess, for the purpose of having their respective reports in readiness on the day named for the re-assembling of the Convention.

Mr. FOLGER—I move to amend by inserting after the word sit, the words, "without pay."

Mr. TAPPEN—I accept the amendment.

The question was put on the resolution as amended, and it was declared adopted.

Mr. GREELEY offered the following resolution:

Resolved, That the Committee on Rules be requested to consider the Rules of the Convention, and report such amendments, as may, in their judgment, facilitate the business of the Convention.

Which was referred to the Committee on Rules.

Mr. SCHOONMAKER—I move that the Convention do now adjourn.

The ayes and noes were demanded, and the SECRETARY proceeded to call the roll, beginning at the end of the list.

Mr. SEAVER—I rise to a point of order, that having arrived at this stage of our proceedings, it is not in order to go backward. [Laughter.]

The PRESIDENT—The Chair rules that the point of order is not well taken.

Mr. MURPHY—I rise to a point of order, that the course of the Secretary is a reflection upon the Convention—going backward. [Laughter.]

The PRESIDENT—The Chair makes the same ruling as in the last case, that the point of order is not well taken.

Mr. BICKFORD—I ask to be excused from voting, because I don't think others will have a chance to vote, and I don't want any exclusive privileges. [Laughter.]

Mr. BARTO—I ask that Mr. Frank's name be called again.

The PRESIDENT—The Chair is informed that Mr. Frank has paired off. [Laughter.] The hour of twelve o'clock having arrived, this Convention stands adjourned until the second Tuesday in November next, at twelve o'clock.

TUESDAY, November 12, 1867.

The Convention met pursuant to adjournment. Prayer was offered by Rev. E. P. WADHAMS. The Journal of Tuesday, September 24, was read by the SECRETARY and was approved.

Mr. M. I. TOWNSEND—Mr. President, it has become my painful duty to announce to this Convention the demise of one of its most accomplished and honored members. My fellow-townsmen, Hon. David L. Seymour, is no more. He expired, after a brief but painful illness, at the country residence of his family at Lanesborough, Massachusetts, on the 11th day of October last. Mr. Seymour would have been sixty-four years of age had he survived until the 2d day of December next. His birthplace was Weathersfield, in the State of Connecticut. He was the son of Ashbel and

Mary Lowrey Seymour, of that town. His ancestors, on both sides, were amongst the earliest and most honored settlers of that State, his paternal stock being the same from which sprung the Seymours so prominent in the politics of both Connecticut and New York. His immediate ancestors were exclusively engaged in agricultural pursuits, and his boyhood was passed in the labors of the husbandman, which, while they invigorate both the physical and the intellectual powers, ordinarily tend to enlarge the better sympathies of our nature, and give us a clearer perception of our relations to the great brotherhood of man. Mr. Seymour was, from his boyhood, essentially a democrat in its broadest and truest acceptation, and never failed to cherish a swelling pride in that noble New England ancestry who held every man, of every clime, to be their brother and only recognized as their superior the God who created them. He pursued a full course of study at Yale college, and graduated there with high honor in the class of 1826. His eminent classical attainments procured him the position of tutor in that institution, and he discharged the duties of that office from 1828 to 1830. Upon his graduation he commenced the study of the law in the law department of Yale college, under the instruction of Hon. David Daggett, a man celebrated in the jurisprudence of Connecticut, and was admitted to practice in that State in 1829. In 1830, he removed to Troy and commenced the practice of the law in partnership with Hon. John P. Cushman, the distinguished jurist of our city. That tireless labor so characteristic of Mr. Seymour's life, aided by a clear, forcible, dignified and eloquent manner of discussion, soon gave him a distinguished position at the bar, and in a few years he came to take rank with the leading lawyers of the country. His practice has ever been extended and successful, and he has justly reaped from it an income which, being invested with that sagacity which always characterized him, secured for him an ample fortune. Mr. Seymour, from his entrance into our State, took a deep interest in politics and was, all his life, foremost in the struggles of the State and country. He was a distinguished member of the Legislature of 1836, and was elected a member of Congress in 1842. In the Congress to which he had been chosen he was selected from the State of New York to represent that State on the committee of ways and means, and as a member of that committee he won a high character for industry, erudition and statesmanship and secured to himself a very prominent position in our great national council. He was again elected to Congress in the fall of 1850, and in the thirty-second Congress discharged the duties of chairman of the committee on commerce with distinguished ability and success. His efforts in favor of river and harbor improvement, and in securing the establishment of reciprocity relations with the Canadas brought him very prominently before the country, and but for that modesty which was an essential part of his nature, would have long since given him an official prominence somewhat commensurate with his personal merit and his political capacity. I have stated that Mr. Seymour's sympathies were essentially

democratic. So strongly was he imbued with such sentiments that in the fall of 1846, when the proposition was before the State to extend the right of suffrage to colored men, irrespective of property qualifications, he voted for that measure, although his so doing was deemed disadvantageous to the democratic party with which he acted, and it was on that occasion that he uttered the expression which I have already once quoted in this Convention, "I will not stand up before my God and deny to any other man any right which I claim for myself"—a sentiment worthy of any statesman of any country, and a sentiment which speaks volumes for the heart which uttered it. I think I may say with safety that, although Mr. Seymour has felt it to be his duty to adhere to the party styling itself the national democracy for the last nineteen years, no word of apology for oppression or of contempt for the oppressed has ever escaped his lips, whether that oppression was practiced upon the colored men of our own land, or upon the white men of Europe.

Mr. Seymour held many minor offices, the duties of which he discharged with ability and fidelity, and, at one time, was urged so strongly for the office of Governor of the State that he lacked, I believe, less than half a dozen votes in the convention of his party of being selected as the democratic candidate for that position. Mr. Seymour was essentially a great man, great not only in his persuasive and effective oratory and the gifts of God, but great from the acquisitions of a diligent and studious life. As an erudite and tireless lawyer he had few equals. He never ceased his investigations into the facts and law which might be brought to his aid on the trial or argument of a cause until the cause was actually tried or argued. He never struggled after mere brilliancy, but everything which could be accomplished by facts or legal suggestions was always compelled into his service, and when his case was submitted to a court or jury, his client might rest upon the assurance that nothing more was possible in his cause.

Mr. Seymour carried the same habit of thoroughness into his official and political investigations. He never took his opinions of public measures from the current creed of his party. But whenever and wherever he was called to act or speak, he brought the full energy of his well trained intellectual powers to bear upon the questions to be discussed or acted upon before enunciating his opinions or committing himself to action. As a member of the committee of ways and means in the first Congress of which he was a member, he adopted neither the views of his democratic or whig colleagues upon the subject, but after exhaustive investigations presented his own views to Congress in a report which spoke for no party, but which was the result of his own matured judgment. Indeed, I might safely appeal to the experience of every gentleman who has been associated with him in public or official matters to bear witness to the endless labor which he bestowed in his examination of all questions in regard to which any responsibility seemed to rest upon him. The members of the Canal Committee of this Convention

must have seen with admiration and wonder the labor which he has performed in investigating the questions brought before them. They well know the importance which he attached to the action of that committee and of this Convention upon the subject of the canals, and I think they will concur with me in the belief that had his mental and physical organization been spared the fatigue of those labors performed by him amidst the heat and depressing influences of the summer, his life would in all probability have been spared for years to society and to his family whom he loved so well. I have spoken of Mr. Seymour's ceaseless industry in the discharge of his professional and official duties. Another trait of his character was not less conspicuous. I refer to his modesty. Mr. Seymour, although well aware of his own powers, as he must have been from the knowledge which he acquired in comparing himself with others in the conflicts in which he from time to time was necessarily engaged, never for a moment became over-confident, and never on any occasion obtruded himself or his opinions where not fairly called by duty or propriety. Indeed, his modesty and cautiousness I have sometimes been inclined to look upon as constituting almost a defect in his character, as I feel assured that but for his extreme carefulness to never act until the right time had come in which to act, and until he was sure he should act right, he would have occupied a vastly more conspicuous position in our State and nation than the public have allotted to him.

In the private relations of life he has left a name without a moral stain.

Genial and affectionate in his nature he was at once the ornament and the idol of the domestic circle, illustrating in his own person the virtues of that ancestry whose memory he so fondly cherished.

Mr. Seymour was a scholar as well as a lawyer and politician. He found time amidst the labors of his busy pursuits to turn aside from the cares and bustle of every day life and hold converse with the great and the good of the olden time. He never forgot his classics, but went back from time to the well springs of ancient learning and imbibed refreshing draughts from their sparkling fountains. He was a careful observer of current events, and when he unbent his mind in social converse his fund of anecdote and illustration seemed actually exhaustless. Indeed, it was in social life that his best powers and most admirable characteristics were called into exercise. His habits of industry prevented his social qualities becoming fully known beyond the favored circle of his intimate friends, but in that circle he shone without a rival. His fountain of fact and anecdote seemed to well up forever. He did not pretend to wit, properly so called, but the geniality of his humor, I think, was never excelled, and he who was blessed with his association when the cares of business were thrown aside, found hours or days in his presence but one long feast of social delight. I first knew him in 1833. From that day we have been neighbors, and for nearly the entire period the most intimate and confiding friends. We adopted, originally, the same views in politics. Mr. Seymour was, like

myself, a man of strong convictions, and it is true that in the latter days of the lamented Silas Wright an estrangement grew up between us. But that estrangement has long since passed away, and our warm, early friendship has been fully restored. As I stand over the grave of my departed friend, I feel that his death is truly a calamity to the State, and I am sure that I have sustained a loss which time can never restore.

Mr. A. J. PARKER—I rise, Mr. President, for the purpose of submitting to this Convention some resolutions in regard to the memory of our deceased friend. But before I do so I may perhaps be permitted to say a few words in regard to him. Inasmuch as I have been honored with his friendship personally for many years. It has been my fortune to be quite intimately associated with him politically and professionally. I have long acted with him politically and we have rarely if ever differed in opinion; and I have happened to be associated with him professionally, during the last ten years, very frequently. I have known him well, and I have known no man in the course of my whole life in whose integrity I had more confidence. I am sure that in all his political opinions no man ever acted more conscientiously than he. While his convictions were very fixed and firm on all occasions, in private conversation, and in his public speeches, he always respected the opinions of those who differed with him. There was a tolerance in all that he said of his political opponents well worthy of our imitation. Professionally, he labored for his causes faithfully and thoroughly. I know no man in the profession who can prepare so thorough a brief for the argument of a case as was always prepared by my deceased friend. The brief was clear in its statements, was well arranged logically, was learned in all that could add to the force of his argument. And this is no mere *post mortem* remark. I have made it frequently in his lifetime; and I have always believed of him as I speak now. I have been aware for years that he was injuring his constitution by too close application to business. I have taken the liberty to urge him to cease his professional labors, which his ample fortune would well have permitted. I have urged him to go abroad with his family, and look upon the old world, and compare its systems with our own, and his education and his taste could not have failed to have made a trip and residence there for a time exceedingly agreeable as well as useful to him. I know he had promised himself that pleasure, and had looked forward for years to its enjoyment. He has said, when I have spoken with him on the subject, even within the last year, "There is one case that I must first close." He alluded to a long and heavy litigation, of which he had long had charge and with which many of us are acquainted. He said, "When I close that argument, which I am now preparing, I shall make the visit to Europe. He closed that argument in August last; but it was, alas! quite too late for the promised pleasure. I greatly regret that he could not have gone abroad and studied for himself the countries of the old world in comparison with our own, for I am sure, like a true patriot as he

was, he would have returned loving still more dearly all that belongs to us. But I will not occupy time and attention in speaking of one whom we all knew so well and esteemed so highly, but I beg leave to offer these resolutions for the consideration of the Convention.

The SECRETARY proceeded to read the resolutions as follows:

Resolved, That this Convention learns with deep regret of the decease, since its last meeting, of the Hon. DAVID L. SEYMOUR, one of its most useful members, beloved for his personal virtues, and respected for his talents and integrity.

Resolved, That in his death New York has lost one of her ablest statesmen, the legal profession a learned jurist, community one of its best and most upright citizens, and his friends one eminently worthy of their confidence and esteem.

Resolved, That these resolutions be entered upon the Journal and that a copy be sent to the family of the deceased, with the assurance of our earnest sympathy with them in their bereavement.

Resolved, That, in respect to the memory of the deceased, this Convention do adjourn.

Mr. FRANCIS—I need not dwell at length upon the character of our deceased colleague and friend, and yet I must in a word give sincere expression of sorrow that one so eminent for usefulness, so distinguished for commanding abilities, so honored in all the walks of life, has passed away forever. I knew him quite intimately for a period of more than twenty years, and in spite of sharp political antagonisms and sometimes painful disagreements, I never ceased to respect him fervently while living, as I do now most sincerely mourn his death and honor his memory. The public character of Mr. Seymour has been well and graphically described. It was distinguished by earnest endeavor, by unremitting and conscientious labor, marked with the force of strong good sense and the full vigor of a well-disciplined and powerful intellect. It may be said of him literally, that, whatsoever he set out to do, that he did with all his might. No abstruse point in law, no difficult problem in political economy, no embarrassing entanglement in business which came before him for examination and solution, that his mind failed to grasp in its full proportions, and work out in the clearness of well-defined logic. He possessed a prodigious fund of knowledge, and it was at all times available for practical use as occasion demanded. In speech he was earnest; his words were well chosen and fluently uttered. In debate he was impressive and forcible, and whether addressing a political assemblage of the people, a jury at the bar, or a deliberative body of representatives, there was matter in his speech that commanded deep attention. He was thorough in all his work, as he was conscientious in the discharge of every duty. It is no fulsome eulogy to say of Mr. Seymour that he was a great man—great in intellect, great in the exercise of power, pre-eminent in his profession, well studied and able in statesmanship, and eminently successful in every field of labor in which he engaged. There was, too, a magnetism in his nature that rendered him a most agreeable companion in social life. It was always pleasant to meet him; there was a heartiness in his manner,

a welcome in his expression, a point and pith in what he said, and a grace and frankness of bearing that made his social companionship charming as it was enjoyable. His wit was keen as a Damascus blade, his points were well taken, his reminiscences of men and events replete with matters always interesting and often humorous. No one tired of hearing him talk; he was never tedious—he knew when to begin, when to stop and just what to say. Genial himself, he imparted the same feeling to others; and so, with this happy faculty of relieving by social attrition his own toil-burdened mind from the weight of care, he also gave a full measure of enjoyment to his associates and companions. Mr. Seymour was a strong representative man of the American type, too distrustful of himself, yet powerful far beyond his own estimate of his abilities. He led a life of unceasing industry; he worked his own way to fame, and won success by hardy endeavor. Living, he wielded a large influence and commanded earnest respect. Now that he has gone a little time before us to the “undiscovered country,” we may in humility review, at this hour, the oft-recurring lesson of mortality, while bestowing our tribute of honor upon the memory of our departed friend and brother.

Mr. J. BROOKS—I must be excused for adding what may seem to be unnecessary remarks to the very eloquent and complete eulogiums which have been bestowed upon the departed. By my association with him many years ago in the halls of Congress, in most trying times and on most trying occasions, where I first formed his acquaintance, there grew up a friendship which has existed from that time to this without decay. For although we were of opposite politics, and were then often divided in our political sentiments, we came together in the Congress of 1850 and 1852, in the midst of perilous times, under great political convulsions, when the questions were of vast importance, especially those between the North and the South; when the civil war then seemed to be immediately impending, which afterward broke out and involved our common country in so many calamities and misfortunes. But under the happy and inspiring genius of great men of opposite politics like Clay and Webster, Cass and Douglas, such men as Seymour, and those of his school of politics, uniting with those of opposite parties, were enabled for the time being to pacify the country and avert that civil war which afterward so unhappily broke out. No man in the House of Representatives was more influential in that pacification than Mr. Seymour. No man in the house exerted a more influential control over the public sentiment of that house, or did more to avert for the time the great calamity which subsequently fell upon us. Mr. Seymour was a man, as I then discovered, of most extraordinary acquirements, although his modesty never permitted him to shine forth with that vigor of genius which he really possessed, or to display that learning and those great acquisitions which he really had. But from the measures which came before that Congress, and which as chairman of the committee on commerce he held the custody of, we were

able to discover those varied acquirements of which I speak, and his profound knowledge of the many affairs he was called upon by members of Congress to give his opinion about, when they were to be acted upon. As chairman of the committee of commerce, he not only was able in the discussion of all those great measures of trade which were connected with the reciprocity question, in which New York was particularly interested, in her trade with Canada, along an extended line of frontier, but he exercised a salutary and great influence over the House of Representatives, leading them to wise and judicious legislation, which I have no doubt he was sorry to see abrogated, and which I have no doubt the good sense of this State will sooner or later claim the restoration of, following the advice then given by Mr. Seymour. As chairman of the committee of commerce, he had custody of our commerce; and in the discussion of the topic of light-houses, the science of optics came up, and I often was surprised that a lawyer, and apparently only a lawyer, should have such a knowledge of science as he displayed whenever the subject of light-houses, the Fresnel lens, or any question connected with optics came into the discussion. There was also before him as chairman of the committee on commerce the subject of the coast survey, when his knowledge of trigonometry, geodesy, hydrography, and kindred subjects connected with the coast survey, deeply impressed my mind. So, also, came before him the subject of steam navigation; and if I mistake not, he was largely influential in passing our present navigation laws, with reference to the regulation of steam boilers, etc., in the navigation of our rivers and harbors; and he displayed the same varied knowledge upon all these topics—upon the power of steam, the use of machinery, and the adaptation of steam to machinery. At all times and on all occasions he seemed ready to explain all these subjects to the satisfaction of any who inquired respecting them. And so upon other topics, as remarked by the gentleman from Rensselaer [Mr. M. I. Townsend], he exhibited such a highly cultivated talent and education, that we may say of him, *Nilul tetigit, quod non ornavit*; he seemed to adorn every subject which he took up, by his thorough discussion. While he was a liberal minded and enlightened man, and embraced in his politics the welfare and good of all men, and the common brotherhood of mankind, as was fully stated by the gentleman from Rensselaer, nevertheless no man was ever more faithful to the Constitution of his country, as it was written, or ever had more regard for the rights of the States, and the pledges which that Constitution gave to the States of this Union. What he has been here, upon the floor of this house, what he has been at the bar, have been fully and amply and beautifully stated by the gentlemen who have preceded me in my remarks; and upon that subject it is unnecessary for me to add a word to the testimony they have given. My excuse for the few remarks I make is the deep loss I feel, and my desire to express to his friends and associates, the pride with which I associated with him in Congress, and the deep regret which

I feel, and which I doubt not all the illustrious men who associated with him in 1850 and 1852, and who may be now surviving, will feel for the loss of a great and highly distinguished man.

Mr. ALVORD—It may not be inappropriate that, upon this occasion, I should make a few remarks, because I believe I speak correctly when I say that my acquaintance and friendship with the deceased began earlier than that of any other man in this body. I had the pleasure of being with him when he was at college, in New Haven, and of being there intimately acquainted with him, belonging to the same society, though not to the same class; and I can speak in regard to the foundation which he laid there for his future eminence. It was well understood that so far as David L. Seymour was concerned, in his class he stood pre-eminent as a mathematician, and equal in all other respects in learning with his associates in his class. It was then predicated of him, and talked of among the faculty and students, that so far as he was concerned, life and health being spared to him, his mark would undoubtedly be made in the world. I have followed him from that time to this, occasionally meeting as we passed to and fro in the State, always in warm friendship, and, so far as I am concerned, with due appreciation of the rising merits and position of Mr. Seymour. I met him here more intimately than I have for many years past; and since that time, during the labors of this Convention, he has been associated with me upon one of the most important committees of this body. I can bear full testimony to his untiring industry, and his unwearied endeavor to bring about the result which seemed to him would be for the best interests of the people of this State. I feel, in common with all others, that when we meet here on this occasion and miss his countenance, we miss not only the countenance of a friend of each of us, but the countenance of a man of ability and power, who, if he had lived, would still further have been a blessing to his country, his State, and his locality.

Mr. MURPHY—After what has been so fully and eloquently and truly said in regard to our late associate, there is little left for me to add. Yet, sir, a most profound sense of duty and friendship impel me not to remain silent on this occasion. When, through the public press, the death of our associate was announced, it was to me, as I doubt not it was to every member of this Convention, most unexpected, as it was most admonitory. But a few weeks ago he displayed here the appearance of glowing health and the vigor of a strong and unimpaired intellect. None can forget the power and ability, as well as the research which he evinced in the discussion of the questions connected with the financial policy of the State. We all listened to it with attention and with instruction. It was his last great effort, and he showed himself in it a statesman. We are called upon to mourn to-day, not the young, but the experienced and mature statesman and useful citizen. My official connection with Mr. Seymour will permit me to speak of him in most decided terms. Twenty-five years ago our acquaintance commenced in the halls of Congress. We entered

that body at the same time; and from that period until the present, our connection has been most intimate. In that body, as has been truly said, he displayed the greatest powers. He brought industry and labor to the consideration of every question, he grasped it with power, and elucidated it with all the learning and power of logic in which he had been educated and thoroughly trained. No man occupied a higher position in the councils of the nation at that time than our deceased associate. He was attached politically to the democratic party, as has been stated; and he advocated its principles with the earnestness of a conviction of their truth and with distinguished ability. He was a States' Rights man. He adhered to the Constitution. He would allow no infringement of any portion whatever of that precious charter of our liberties. Until the time of his death he remained consistently attached to that party and sustained its principles. And when, under the law by which we were convened, his party were invited to select their best men to meet here for the purpose of reforming the Constitution of the State, David L. Seymour stood foremost among those selected for that position. All men who know his history, and who admire in a public man a conscientious search after truth and an honest advocacy of it, must reverence and esteem his memory.

Mr. E. BROOKS—I must ask the indulgence of the Convention while I add my brief testimony to what has been so well said in regard to the virtues and the qualifications and abilities of our deceased friend. Yet, sir, to add words on an occasion like this would seem to be almost like gilding refined gold, or painting the lily, or adding perfume to the violet. I have known Mr. Seymour for some twenty years or more. I recognized his services first in the Congress of the United States, not as a member of Congress, but as one of those who observe and take note of whatever transpires in the councils of the nation. I, therefore, knew him as well perhaps and perhaps better than some of those who were immediately associated with him in public life; and I can bear witness to the fidelity with which he served his constituents, his country, and especially the people of this State. I knew him as a member of the committee on ways and means in the discussion of those great subjects which at that time agitated the country. But I knew him more intimately as chairman of the committee on commerce, next in importance to the great financial committee which represents the money affairs of this great government. I knew him especially as one taking an interest in steam navigation, to which allusion has been made. At a time when there was a reckless sacrifice of human life upon the rivers and harbors of the country, he originated the great measure for the protection and safety of those who took passage on board our public steamers, or on board of vessels arriving in the harbor and port of New York and in other ports of the country. In all things he was a faithful, diligent, and truthful man. I can say, and all who knew him will bear witness to the truth of what I say, that he was in all respects a true christian gentleman, a member of the church, and an ornament to the church which he repre-

sented, and of which he was a member. He has left that behind him which is better than all the wealth which he possessed, and that is, the reputation of an honest man and of a faithful public servant. In the largest and the highest sense, he was what may be called a statesman; because he comprehended the necessities of the country and the duties of a public man, not merely to the constituents he immediately represented, but to the State at large. He was a patriot, too, in its largest sense, as has been said, because he not only loved his country with sincerity, but served it with the highest devotion. He recalls to my mind those lines of Pope, in uttering which I will conclude the brief remarks I have to make:

"Statesman, yet friend to truth; of soul sincere;
In action faithful, and in honor clear;
Who broke no promise, serv'd no private end,
Who gained no title, and who lost no friend."

The question being then taken upon the adoption of the resolution offered by Mr. Parker, it was carried.

The Convention accordingly adjourned.

WEDNESDAY, November 13, 1867.

The Convention met at 9 o'clock A. M.

Prayer was offered by Rev. A. A. FARR.

The Journal of yesterday was read by the SECRETARY, and approved.

Mr. ALVORD—I have received a line from Judge Strong, of Suffolk county, saying that he is very much out of health, and desiring me to ask, at the hands of the Convention, indefinite leave of absence for him.

No objection being made, leave was granted.

Mr. GOULD—I ask for indefinite leave of absence for Mr. Krum, of Schoharie, who is detained at home by the illness of his father, who is lying at the point of death.

No objection being made, leave was granted.

Mr. GOULD—I also ask leave of absence for Mr. Rumsey for one week.

No objection being made, leave was granted.

Mr. GOULD—I also ask leave of absence for Mr. Ballard for one week.

No objection being made, leave was granted.

Mr. VERPLANCK—I have been requested by Mr. Wakeman to ask leave of absence for him for the present week.

No objection being made, leave was granted.

Mr. J. BROOKS—I rise to a question of order. The point of order I desire to make is upon the legal capacity of this Convention to sit any further without an enabling act of the Legislature of the State. Before I proceed, I will remark that I do not intend to appeal from the decision of the Chair, whatever it may be, because I suppose the Chair, like all of us, owes that deference to the opinion of his party declared in a caucus, which, more or less, binds all of us, and that he will be very likely to be influenced by that decree. I therefore do not propose to appeal, but simply to state the point of order for the decision of the chair.

Mr. FLAGLER—I rise to a point of order, that, in this part of the hall, the remarks of the gentleman are inaudible.

The PRESIDENT—The Convention will please

be in order, so that the gentleman from New York can be heard.

Mr. J. BROOKS—The organic act—I call it the organic act—under which this Convention assembled, was passed March 29, 1867, provided several laws, or rather established several provisions, which are binding upon this Convention, as the supreme law of the State, enacted, as they were, by the government of the State, and to which this Convention, as all other citizens, owe obedience. Among the provisions of this law was one for the election of 160 delegates, 32 of whom were to be chosen in a very peculiar way, sixteen of them only by a majority of the votes, the other sixteen by a minority voting. This organic act went further, and provided, among other details, for the election of members of this Convention and for their organization, descending to a point so minute even, as to the appointment of librarian and doorkeeper and of messengers and stenographers. It gives to this Convention a fixed amount for their compensation, it provides that the delegates to this Convention shall be entitled to six dollars per day; the Secretary shall receive fifteen dollars per day. It enters into many minutiae, one of which is that a majority of this Convention shall constitute a quorum to do business. It exempts delegates of this Convention from arrest for fourteen days. It provides also for the usual freedom of speech and debate which legislatures have; it also gives us power, which we do not have of ourselves, to expel members for disorderly behavior. But the point to which I wish especially to call the attention of the chair is the fifth provision of this organic act. I call it an organic act because we have paid it that deference throughout all our sittings in considering the organic act, and in acting upon its provisions, and because by, and through this act only we have held all our positions here. But we are now, I fear, about to violate the fifth provision of this organic act convoking this Convention. This section provides:

"All said amendments to the Constitution shall be submitted by the Convention to the people for their adoption or rejection, at the next general election, held on the Tuesday next after the first Monday of November next."

On the 5th of November last, that time, provided by law for the submission of the Constitution we are to make, has been exhausted, and the point of order I wish to make, is, that the time provided by law for the sitting of this Convention has been exhausted, and it is not in order for us to go on and frame a Constitution under this law without an enabling act of the Legislature; or in other words, although we are a sort of a committee or corporation, a corporation created by the Legislature and by the people, yet we are without that soul, that vitality which enables us to go further without some positive enactment of the Legislature of the State, authorizing us so to do. I know it is contended that the word "shall" is directory and not mandatory. I know not what definitions legal gentlemen may give to this strong word "shall," not "may." "Said amendments or Constitution shall be submitted by the Convention to the people for their

adoption or rejection, on the Tuesday next after the first Monday of November next." I was educated in that old Anglo-Saxon school of Lindley Murray, where the word "shall" was imperative, forcible and strong—as forcible as any word used in the English language. Now, these words, directory and mandatory, as used at the bar, derived from the common law or the old Roman law, may admit of certain legal quibbles, yet the word "shall," as I was educated, is one of the strongest auxiliary verbs which can be used in the English language, and is mandatory here, as any Anglo-Saxon word in our language can well be. The word "shall" then being imperative, the question which arises for the Chair to decide, is whether this Convention shall violate a law of the Legislature enacted expressly for its government, and proceed to the further transaction of business as a legal body, without an enabling act of the Legislature so to proceed. I know there are precedents on both sides of this subject, which have been admirably set forth in a learned volume written by Mr. Jameson, of one of the Western States. But, from a careful perusal of those precedents I undertake to say, that, except in the revolutionary period of our history, from 1776, and the post revolutionary period immediately succeeding, and that unfortunate revolutionary period which began in our country in 1860 and extended to 1865; the whole series of the precedents, take them from beginning to end, go to establish the authority of the sovereignty of the Legislature, acting through an organic act like this, over any and whatsoever convention may assemble under that act. I could detain this Convention by reading thirty or forty precedents from that book; but the memory of each man will recall for himself that most all the rebel States were carried out of this Union—certainly the States of Virginia North Carolina and Tennessee—by Conventions overriding lawlessly the government, and overriding the acts of the Legislature which convoked those assemblies. I wish to call attention to two precedents set forth in this book, the first of which is the act of the Convention of North Carolina, convoked in 1835. The Legislature of North Carolina passed an act, requiring, "that no delegate should be permitted to take his seat in Convention until he should have taken and subscribed an oath or affirmation as follows: 'I, A. B., do hereby swear (or affirm, as the case may be) that I will not directly or indirectly, evade or disregard the duties enjoined or the limits imposed to this Convention by the people of North Carolina, as set forth in the act of the General Assembly,' passed in 1834, entitled 'an act to amend the Constitution of the State of North Carolina,' which act was ratified by the people."

That act limited and bound up the Convention of North Carolina in any and every form; it was a most rigid, violent and extraordinary act, could well have been passed by a Legislature, before a Convention could proceed; it imposed upon the members the necessity of taking an oath that they would follow all the provisions of that act. After much discussion, the Convention of North Carolina, unable to act at all without taking the preliminary oath, took it and were bound by it, recognized it as

the law of the State and acted under it. There is one more case, a precedent in point which as it may influence members here, who would not be otherwise moved, I will read from Jameson (p. 382-3), rather than condense.

"In 1855 the first territorial Legislature of Kansas passed an act to take the sense of the people at the election in October, 1856, on the call of a Convention to form a State Constitution. Accordingly, an election was held, at which about 2,500 votes, cast mainly by pro-slavery voters, were polled; the free-State men not voting. At this election a new Legislature was elected, all pro-slavery, which met in January, 1857, and in conformity with the vote of the 2,500 at the preceding October election, passed an act providing for an election of delegates on the fifteenth of June, to meet in Convention in September following. The delegates elected assembled in Convention at Leocompton, September 5th, but soon adjourned over to October to await the result of the general election to be held on the first Monday of that month. At this election both parties nominated candidates, and after rejecting fraudulent votes, the free-State party carried the Territorial Legislature and the delegate to Congress. The Convention re-assembled in October, after this election, formed the Constitution afterward so famous as the Leocompton Constitution, and submitted only a portion of it to the people—that portion relating to slavery—and that in a form and under a test oath which would prevent the free-State people from voting. December 11th, following, the Legislature, containing a free State majority, assembled and passed an act to submit the Leocompton Constitution fairly to a vote of the people on the 4th of January, 1858. On the 21st of December, 1857, the vote was taken in the manner prescribed by the Convention, and resulted as follows:

For the Constitution, with slavery, ... 6,266
For the Constitution, without slavery, ... 567

January 4th, 1858, in accordance with the act of the Territorial Legislature, the people voted as follows:

For the Leocompton Constitution, with slavery, ... 138
For the Leocompton Constitution, without slavery, ... 24

Against the Leocompton Constitution, ... 10,226
That was recognized and has been recognized as the fundamental law of the State, under which the State of Kansas existed and came into the Union. I repeat, then, that this book is full of precedents, almost universally, except in the periods of our revolutionary history, recognizing the supreme authority of the State Legislature over the organization of Conventions, and therefore I call this the organic law. In order to fortify my position, permit me to state, as I presume the fact is known to us all, that the highest legal authority of this State—I do not mean the court of appeals—but a gentleman of high legal attainments, not of the party to which I belong—I mean the Attorney-General—has given an opinion to the Comptroller of this State that the organic law is so binding upon the Comptroller of this State and so binding upon this Convention, that it is not in the legal power of the Comptroller of the State to issue his warrants for the

compensation of the members of the Convention. I submit these views to the consideration of the Chair—

Mr. MERRITT—Will the gentleman allow me. I understand the Attorney-General has given no such opinion; it has been running around through the papers, but I understand the Comptroller has received no such official opinion.

Mr. J. BROOKS—I am assured on the very highest authority that he has given such an opinion.

Mr. MERRITT—It must have been within a few hours then.

Mr. J. BROOKS—I understood so from his own lips this morning; it is no matter of secrecy, because several gentlemen, members of this Convention, heard him say so in my presence. Such being the facts of the case, I submit that is an opinion which the chair will take into consideration, and also the fact that this body is of one political organization and the Legislature, or certainly one branch of it, is of another political organization, and that wisdom on our part would consist of acting with unity, and not in conflict with whatever might be their will; it would be more proper upon our part to wait at least for an enabling act of the Legislature.

The PRESIDENT—The Chair will overrule the point of order made by the gentleman from New York [Mr. J. Brooks].

Mr. SMITH presented the petition of the citizens of the town of Baker for the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. C. C. DWIGHT presented a petition of citizens of Seneca county on the same subject.

Which took a like reference.

Mr. KETCHAM offered the following resolution, and asked that it be referred to the Committee on Rules.

Resolved, That the 22d rule be amended so as to read: "Sixty-five members shall constitute a quorum in Committee of the Whole. If at any time in Committee of the Whole it shall appear that no quorum be present, the committee shall immediately rise, and the chairman shall report the fact to the Convention."

Which was referred to the Committee on Rules.

Mr. ALVORD—I move that when this Convention take a recess at two o'clock, they take it until seven o'clock this evening.

Mr. BICKFORD—I would suggest to the gentleman who has made this motion that he so modify it as to make it a standing order hereafter, that the sessions of the Convention be from nine o'clock until two, and afterward meet at seven, until the Convention see fit to alter this rule.

Mr. ALVORD—I have no objection to that.

The question was put on the motion of Mr. Alvord, as modified, and it was declared carried.

Mr. J. BROOKS offered the following resolution:

Resolved, That the Attorney-General be requested to send this Convention the copy of any opinion he may have given to the Comptroller respecting the compensation of delegates sitting after November 5, 1867.

Which was laid over under the rule.

Mr. McDONALD offered the following resolution, and asked that it do lie on the table:

Resolved, That the publishers of the Albany *Journal* and *Argus* be released from any further obligations to publish verbatim reports of the proceedings and debates of this Convention, provided, however, they hereafter publish a full abstract of such proceedings and debates.

The resolution was laid on the table.

Mr. CHURCH—I take it for granted that the Convention is about to go into Committee of the Whole upon the report of the Finance Committee. I desire to move that the consideration of that report be postponed for two weeks, together with that portion of the report of the Committee on Canals which relates to finance. I only wish to say, so far as I am concerned personally, it is impossible for me to remain here this week or next. I have engagements which are imperative and which I must fulfill. I came here expecting that this Convention would adjourn until next spring or *sine die*. I did not suppose from what I had heard from delegates and others that it would be considered proper to go on at this time to finish the Constitution, but the majority of the Convention having decided otherwise, of course I must acquiesce. I only ask that this report be postponed for this time, as I desire to be here when it is considered.

Mr. ALVORD—I am opposed to postponing any thing in reference to the business of this Convention from this time out. I am in favor of taking up the business of the Convention in the order in which it shall come before us, and so far as regards our duty in reference to it, that we fulfill that duty if we can and in the shortest possible time. It may be that in two weeks we may be through and away from here. I trust, therefore, there will be no postponement, and I ask the gentleman from Orleans [Mr. Church] what there is remaining of the finance report which requires his presence here? We have passed over the whole of it with the exception of the portion which refers to taxation, and that is an amendment offered by the gentleman from Chautauqua [Mr. A. F. Allen]. So far as regards the finance report it has been virtually passed over and passed upon by this Convention.

Mr. CHURCH—I think the gentleman from Onondaga [Mr. Alvord] is mistaken. The principal provisions of the financial report have been passed upon, it is true; but there are important provisions remaining yet to be considered by this Convention; provisions which I regard as essential to a perfect system of finance, and without which I should consider we had made no improvement whatever in the present Constitution. One is the provision prohibiting taxation for internal improvements. That provision was rejected by a small majority in Committee of the Whole; but I designed to bring it up in Convention and have it properly considered. Another provision has not been considered at all; and it is the one which prohibits the giving away of the money or the property of the State. That section was postponed until the report of the Committee on Charities should be considered. Then there is this subject of taxation, which certainly is as important as any which the

Convention has or can consider, which has not been disposed of at all. The gentleman who introduced the amendment upon that subject, and who has charge of the subject so far as the Finance Committee is concerned, Mr. Allen, is not here. I have no disposition to stand in the way of what may be deemed proper and right by the majority of this Convention; but I may be permitted to remind the gentleman that the attempt to finish this Constitution within two weeks or three weeks, and in my judgment, before Christmas, will be utterly futile. I do not believe it can be done properly with that consideration which we have already devoted to that part of the Constitution we have considered, or with that consideration which is due to the subjects we are yet to pass upon; and any Constitution that shall be hurried through, that shall not receive that consideration which is due to it, will, in my judgment, be rejected by the people. It will be utterly useless for us to sit here and make a Constitution in that way. So far as the business of the Convention is concerned, I cannot see why it is not just as well to take up the other business and let this pass over, as to force this upon the consideration of the Convention.

Mr. VERPLANCK—In endeavoring to oblige the gentleman from Orleans [Mr. Church] we shall, perhaps, disoblige other gentlemen. At the end of two weeks, as a member of the commission upon the subject of war claims in Massachusetts, upon the general government, I shall be obliged to be absent from the Convention, as that commission meets in Washington on the first of December; and I am quite as anxious as the gentleman to be present, and my constituents have quite as much interest in the question of finances as the constituents of the gentlemen from Orleans. And while I should be glad to oblige him, I must be excused from giving an affirmative vote in favor of his motion, because I shall not be able to be here at the time set by him, being engaged upon a public duty which cannot be postponed or neglected. I shall therefore be obliged to vote against the proposition.

The PRESIDENT—A two-thirds vote will be required, under the rule, to adopt this motion.

Mr. OPDYKE—I hope this Convention will grant the chairman of the Finance Committee the courtesy he asks. If it should refuse to do so, I think it will be the first instance in which it has refused that courtesy to the chairman of an important committee. I understand the gentleman from Orleans to say that it will be impossible for him to be present before the time named in his motion. It is known to this Convention, not only that he is chairman of the Finance Committee, but that he has been more especially perhaps than any other chairman, the organ of the committee to express its views upon this floor. His mind is thoroughly imbued with a perfect knowledge of the subject, and it is due, in my judgment, to the people of the State that one so well qualified to elucidate the truth upon the subject of finance, should be here when the balance of that report is considered. I feel that this Convention will not suffer by granting the indul-

gence asked. We have plenty of other business before us, matured for consideration, in which I have no doubt the chairmen of the respective committees will be present to express the views of their committees, and I do hope, therefore, the indulgence will be given.

Mr. ANDREWS—I am constrained to oppose for my own part, the request which has been made by the gentleman from Orleans. I nevertheless should greatly regret if the Convention should be compelled to consider and act upon the report in question without his being present; but I think that our duty to the State, our duty to ourselves imperatively requires that we should proceed with our business in regular order, without reference to the convenience of any individual member of the Convention.

Mr. BARTO called for the ayes and noes on the motion, and a sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the motion, and it was declared lost by the following vote:

Ayes—Messrs. Barto, Beadle, Bergen, E. Brooks, F. P. Brooks, J. Brooks, E. A. Brown, W. C. Brown, Burrill, Cassidy, Chesebro, Church, Clarke, Colahan, Conger, Corning, Daly, Farnum, Ferry, Fuller, Garvin, Graves, Hadley, Hammond, Harris, Hatch, Hitchman, Jarvis, Larremore, A. R. Lawrence, M. H. Lawrence, Lowrey, McDonald, Monell, Morris, Murphy, Opdyke, A. J. Parker, Pierrepont, Potter, Robertson, Rogers, Rolfe, Roy, Schell, Silvester, Stratton, Tappen, S. Townsend, Tucker, Veeder, Wales, Weed, Wickham—54.

Noes—Messrs. C. L. Allen, Alvord, Andrews, Archer, Axtell, Baker, Beals, Bickford, Carpenter, Cooke, Curtis, Duganne, C. C. Dwight, Eddy, Elf, Endress, Field, Flagler, Fowler, Gould, Grant, Hale, Hiscocq, Hitchcock, Houston, Ketcham, A. Lawrence, Lee, Merrill, Merritt, Merwin, Miller, Pond, President, Prindle, Prosser, Root, L. W. Russell, Sheldon, Smith, Spencer, Verplanck. Williams—43.

Mr. CHURCH—Do I understand the Chair to decide that it is lost because the vote did not reach two-thirds?

The PRESIDENT—Under rule 18, this having been made a special order, a two-thirds vote is required to rescind it. The rule reads:

"RULE 18. Any particular vote or other matter on the general orders may be made a special order for any particular day, or from day to day, with the assent of two-thirds of the members voting, and no special order shall be postponed or rescinded except by a similar vote."

Mr. BICKFORD—I move that the Committee of the Whole be discharged from the further consideration of the report of the Committee on Finances, and that that report be now considered in Convention.

The PRESIDENT—The Chair thinks that motion is not now in order. It may be made when the committee shall report.

The Convention then resolved itself into a Committee of the Whole on the reports of the Committee on Finances and the Committee on Canals, Mr. SMITH, of Fulton, in the chair.

The CHAIRMAN announced the pending question to be the following amendment, offered by Mr. A. F. Allen:

SEC. —. The Legislature, at the first session thereof after the adoption of this Constitution, shall provide by law for a uniform rate of assessment and taxation upon all property within this State (and not *in transitu*), including all debts, whether such property or debts be owned by or due to residents or non-residents of this State, against the persons in the possession or having the control thereof, without any deduction from the value thereof for any debts due or to become due from such persons, and for requiring from every person within this State a sworn statement, at the cash value, of all taxable property or debts in the possession or under the control of such person.

SEC. —. The Legislature shall not hereafter exempt any property or class of property from taxation, except such as is now expressly exempted by the statutes of this State.

Which Mr. Rumsey had moved to amend by inserting after the word "person," in line eight, the following:

"Except such debts as in the sworn statements hereinafter mentioned, shall be particularly set out with the name of the creditor, his residence, the date, amount, consideration and form of such indebtedness, and when the same will become due."

The question was then put upon the amendment offered by Mr. Rumsey, and it was lost.

The question then recurred upon the amendment offered by Mr. A. F. Allen.

Mr. BICKFORD—Is the question upon the first of these sections, or upon both of them together?

The CHAIRMAN—Upon the whole. A division may be called for, if desired.

Mr. BICKFORD—I call for a division, that the question may be first taken upon the first section.

Mr. ALVORD—I move to strike out in the seventh and eighth lines all the first section after the word "thereof" down to and including the word "persons."

Mr. E. BROOKS—I offer another amendment, that the section shall be stricken out all after the fourth line, so that it shall read,

"The Legislature, at the first session thereof after the adoption of this Constitution, shall provide by law for a uniform rate of assessment and taxation upon all property within this State."

The CHAIRMAN—There are two amendments pending already.

Mr. E. BROOKS—The division of the question can hardly be considered as an amendment.

The CHAIRMAN—The amendment of the gentleman from Onondaga [Mr. Alvord] is an amendment to the amendment of the gentleman from Chautauqua [Mr. A. F. Allen].

Mr. ALVORD—My amendment strikes out the words "without any deduction from the value thereof for any debts due or to become due from such persons."

Mr. BICKFORD—I hope that will not be stricken out, because a deduction will be made from our striking it out which I think would be wrong.

Mr. MURPHY—The question I presume is upon the amendment of the gentleman from Onondaga [Mr. Alvord]. It does not strike me that the object

that is proposed by his amendment is desirable to be attained, there being no express provision with regard to the deduction of debts. I think there ought to be an express provision in order to accomplish the object of the gentleman from Onondaga, that the debts of a party may be deducted.

Mr. ALVORD—My idea in regard to the matter is, that we ought to pass the section just as it is; but I am entirely satisfied that that cannot be done; and for that reason I want to make it so that it will pass, if possible, in this committee and Convention. I want, therefore, to omit the question of the offset of debts, and to say nothing about it in the Constitution, leaving that question to be determined by the Legislature, so that, if, at any time hereafter, the Legislature may see fit so to do, an act may be passed allowing the offset of debts. My idea is simply to leave that question to legislative action.

Mr. MURPHY—I thank the gentleman for his frankness. I understand he is in favor of the section as it is, and his amendment really leaves the section as it is. It merely strikes out some surplusage in the section, but leaves the principle intact, that a man is to be taxed for what he holds, choses in action, or debts due him, and have no credit for those which he owes. This principle, I think, has been demonstrated already before this Convention to be a monstrous one. A man doing business to the amount of one or two millions of dollars, selling goods to that amount, and having evidences of the indebtedness to him in his hands in the shape of notes or other obligations, must be taxed for the whole amount of that indebtedness without any offset for what he owes, when perhaps he owes nearly as much or quite as much. It was shown satisfactorily, I think, by the gentleman from New York who last addressed the committee on this subject [Mr. Opyke] that such a course would have the effect of breaking down entirely the commercial business of the city of New York, and the effect will be further; it will be to tax the same property three or four times over; because a man who thus owes the amount of this indebtedness also holds indebtedness, and property may have gone through three or four hands before a sale, all holding each other's indebtedness, and all to be taxed really for the same identical property. With regard to this matter of taxation, I, perhaps, have some peculiar views in an entirely opposite direction from this amendment. I mean the original amendment proposed by the gentleman from Chautauqua [Mr. A. F. Allen]. In my judgment personal property should rather be relieved from taxation than taxed, so far as it is engaged in business. I think that it is trade and commerce which has given the State of New York that pre-eminence and prosperity which it enjoys in this great republic over its sister States. If by legislation we shall pursue a course of taxing this property which is engaged in trade, and driving away from us the traffic which we enjoy, we shall have killed the goose which lays the golden egg. I would, sir, to pursue my own views upon this subject, expressly exempt from taxation all property actually engaged in trade, and which

gives thrift and activity to our industry and enterprise; and I hope that this Convention, whatever may be its views with regard to this matter, will not incorporate in this Constitution any provision upon the subject which will give the Legislature power to try the experiment as proposed by the gentleman from Onondaga [Mr. Alvord], for they would soon be under the necessity of retracing their steps, although no particular damage might be done beyond one or two years' useless experiment. I am opposed to the whole section. I do not see that the amendment proposed by the gentleman from Onondaga [Mr. Alvord] will vary the section from what it now is; and I hope that the good sense of this Convention will not sustain such a policy.

MR. S. TOWNSEND—I agree fully with the sentiments expressed by the gentleman from Kings [Mr. Murphy], with reference to exempting from taxation all property that is engaged in the ordinary relations of business. I think if gentlemen will refer to the documents exhibiting the assessment of taxation in this State they will find, after computing the declared, so to say, value of incorporated and associated personal capital in this State, of all our railroads, of all our insurance companies, turnpikes and various other corporations, I cannot now recollect which may be styled business corporations; that the amount returned as personal property falls far below the actual value of those incorporations. Twenty years ago I suggested in a body similar to this as the result of my reflections, what was suggested by a distinguished gentleman who had held a high official position in this State, Mr. Samuel B. Ruggles, that the public would be benefited by the entire exemption of personal property except such as was represented by declared or associated capital. This, to be sure, at first might appear to impose too great a burden upon the real estate of the State. If my memory serves me, the return of personal property was then only two hundred millions of dollars, which everybody knew was very considerably below the amount of incorporated capital. I think it will not be considered wise for this Convention to enter as much into detail as is proposed in this amendment directory of the Legislature as to the mode of assessment. This is a matter far better to be left to the discretion of a wise and honest Legislature, whose errors can be remedied in a year or two at least, whilst ours cannot be righted so readily. If we choose to direct, I should prefer, and should assist in imposing a provision of this nature: that all the taxes imposed under the authority of the Constitution, should be laid upon the fair assessed value of real estate, and upon the declared incorporated capital of the State. I will instance what is known as special partnership capital. That is a peculiar institution in this State. It was copied, perhaps, from England. In this act certain individuals declared an amount of special capital. I would take that declared capital as taxable; beyond that I would not attempt to control it, although I should not allow it to escape. Take property *in transitu*, for instance a cargo of coffee worth \$100,000, in being sold

several times it might represent half a million of dollars in business notes in Wall street before it comes to the consumers; would it be asked of every gentleman through whose hands the coffee has passed to return his hundred thousand dollars, when the half million of dollars so obtained represents but one hundred thousand dollars, the original value of the coffee? I make this illustration as one showing the impossibility of imposing fairly the obligations of an amendment of this nature. It is a matter legislative in its character, a matter of detail. Taxation is one of the greatest subjects that can occupy our attention. It is not a matter that can be disposed of without due reflection. This section is more important than any which has as yet been adopted in this article. The question overcomes every other. In reference to what may seem at first to be the result of this course, that is, the imposing of a greater burden upon real estate, let me suggest that personal property in its nature and essence, must have its origin in something of value. It must be something more than a piece of paper; it must be something that has had its origin in a positive value. Accepting that principle, how can that value be housed or guarded anywhere except upon real estate? There you get your taxation. The more valuable the property, of course the greater the amount of its rental, and of course the greater its proportion of taxation. Take the article of jewelry. A wealthy establishment in a compass of twenty feet square will possess property the value of perhaps a million dollars. I take an extreme case, because that is such an one as has probably suggested itself to the minds of gentlemen. Jewelry establishments pay the highest rental, and with it, perhaps, the highest taxation. They are not found in an obscure portion of the town, where rents are cheap, but where a rent of perhaps twenty-five thousand dollars per year is paid. I know that in Brooklyn and New York cities taxation has risen three or four per cent, and the rental feels this taxation severely. I will not pretend to go further into the subject at present. The result of the revolution we have gone through has better fitted the members of this Convention for that deliberation which is necessary to the consideration of this question and the intelligent direction of their minds upon it.

MR. W. C. BROWN—While I must entirely disagree with the gentleman from Kings [Mr. Murphy] and the gentleman from Queens [Mr. S. Townsend] in the idea they throw out that personal property ought not to be taxed at all, yet I fully agree with them in the opinion that it ought not to be taxed more than once.

MR. MURPHY—I am not opposing taxation of personal property, but only the taxation of personal property engaged in business.

MR. W. C. BROWN—I cannot assent to that doctrine either. But I do most emphatically assent to the opinion promulgated by those two gentlemen that personal property should not be taxed more than once. Take the case of a man possessing integrity of character and business capacity, who wants to enter into business. He has no money nor property; but he has a friend who is willing to furnish him the necessary amount of money

to enable him to start in business and make himself useful in a business capacity. He gives him, if you please, ten thousand dollars as a loan. The lender is assessed for his ten thousand dollars. But if you tax the borrower, upon what is he assessed? Not upon property, for he does not own any. You are taxing him, I might almost say, upon the integrity of his character, for that is all his stock in trade, all upon which he can do business. I rose, however, not to prolong this discussion, but for the purpose of suggesting to my friend from Onondaga [Mr. Alvord] that he accept an amendment to his amendment to carry out the purpose which he should have in view in the amendment he offers. I will ask him to strike out the words, "without any deduction from the value thereof for any debts due or to become due from such persons," and insert the words, "after deducting from the value of the personal property of each person the amount of the debts due or to become due from such person." The section, then, I think, will carry out the purpose that must be intended. I hope the amendment of the gentleman [Mr. Alvord] will pass either with the amendment I have suggested or without it if we are to legislate in this Convention upon a subject which, in my judgment, ought to be left to the Legislature.

Mr. HAMMOND—I would like to ask the question whether if a man owes for a farm a thousand dollars, the farm is not taxed to him? Yet if he has a thousand dollars personal property he is exempted from taxation? This exemption of debts has always enabled most personal property to evade all taxation; real estate has it all to bear. Make them equal. If we exempt debts on personal property, exempt them on real estate.

Mr. VERPLANCK—This is one question which can be very properly left to legislation. It is a question for a Legislature how taxes shall be assessed. It seems to me it is hardly worth while for this Convention, upon the plea that the Legislatures heretofore have not adopted a true rule, for us to dictate to a future Legislature a rule in this respect. If there is any thing in the world within the province of a Legislature, it is this question of assessing taxes—upon what they shall be assessed, and how they shall be assessed. I am one of those who believe we have been legislating too much in this Convention, and not leaving enough to the Legislature. I hope, therefore, a vote upon the subject will be the first step we shall take to show we have confidence in the men who will come after us in this hall, and leave these subjects to proper legislation.

Mr. HALE—I agree fully with the gentleman who has just taken his seat [Mr. Verplanck]. I think it is unfortunate that this discussion, upon the subject of taxation, should have arisen, for the reason that it takes up the time of this Convention upon a subject which is eminently one of legislation, and not one of constitutional enactment. I think the Committee on Finance showed great discretion in refusing to insert in their report any provision upon this subject. And for this reason, without expressing any opinion upon the merits of the proposition of the

gentleman from Chautauqua [Mr. A. F. Allen], or the different amendments offered to-day by other gentlemen, I shall vote against all amendments, and all provisions upon this subject of taxation.

Mr. McDONALD—While I agree with gentlemen here that the mistake of this Convention has been in too much legislation, yet there may be too little in reference to this question of taxation. The Legislature has approached it very often. They always agree in the general propositions; but when they come to apply them, somehow each member of the body finds his pocket touched and they never agree to any uniform plan. They defeat it, not on the ground that the majority agree among themselves; but on the ground that they disagree to any particular plan. It seems to me that we should establish in the Constitution two principles. The first principle is, that all property within this State shall be taxed. As to the question whether debts shall be left out or not, leave that to the Legislature; as to the question of who shall be taxed, leave that to the Legislature. As to all other questions, except the single one that all property shall be equitably taxed leave it to the Legislature, with this other provision, that every person shall be required to furnish a sworn statement. With these two general rules, let the Legislature work out the rest. The balance is detail; these are principles, and they are principles that no person here will deny to be just and correct. The Legislature will consider what the statement shall contain. It may be a sworn statement of the aggregate value of a man's property. A schedule may be presented as is now required by the United States. That may be arranged as is thought fit. All that is necessary is that a man must return a sworn statement as the law directs, and the Legislature must require some sworn statement. It does seem to me that those two general principles are not legislative; that they are within the province of this Convention, and as much necessary and proper as any other part of the Constitution. I am, therefore, in favor of enunciating those two principles: that all property, including debts, shall be taxed equitably, and that every person shall return a statement. Having done those two things, leave the rest, and the detail entirely to the legislature. In that way we establish a principle, and we furnish a means by which we can get at the property, and that is all that is needed.

The question was put on the amendment of Mr. Alvord, and it was declared lost.

Mr. W. C. BROWN—I offer the following amendment.

The SECRETARY proceeded to read the amendment as follows:

Strike out the words "Without any deduction from the value thereof for any debts due or to become due from such persons," and insert in lieu thereof the words "after deducting from the value of the personal property of each person the amount of the debts due or to become due from such persons."

Mr. E. BROOKS—I intimated an amendment a moment or two ago which I hoped to see voted

upon before this amendment of the gentleman from St. Lawrence [Mr. W. C. Brown]. Perhaps he will withdraw it.

Mr. W. C. BROWN—I will withdraw. I do so at the request of the gentleman.

Mr. E. BROOKS—I then renew the amendment I suggested, and which is to strike out the whole of this section after the word "State," in the fourth line of document No. 129. I believe there is ample power, as has been stated over and over again, in the Legislature, to revise and amend and consummate all that is necessary to impose a proper tax upon the real and personal estate of the people of this commonwealth. I believe the section, as introduced by the gentleman from Chautauqua [Mr. A. F. Allen], and which is now under consideration, is in every respect a most pernicious one to the trade and commerce of the State. It seems to me that the remarks of the gentleman from New York [Mr. Opdyke] on the night of the 23d of September, illustrating, as a practical merchant and in a practical way, the effect of a section like this upon the business of a great commercial emporium and the country is sufficient to carry conviction to every reasonable mind within this Convention that such a provision ought not to be adopted. Sir, I am convinced that a section like this which should be incorporated into the fundamental law of the State, an act amendatory in its legislation, would inflict a blow upon the commerce of New York from which it could not recover for a long term of years, and we would be obliged, additionally, to amend the Constitution by which this provision that is now recommended would be repealed. Knowing how much has been said on this subject—knowing how completely the argument has been exhausted—I will not detain the Convention further than to express the hope that the amendment I have suggested will be adopted.

The question was put on the amendment of Mr. E. Brooks, and it was declared carried.

The question was announced on the adoption of the section as amended.

Mr. McDONALD—I now move to add the last section, requiring from every person within this State sworn statements as to the cash value of property owned by or under the control of such person. I do not understand that the principle of that alone has been decided by striking out what we have stricken out. It does seem to me that the most important part of the section is that requiring every person to return sworn statements.

Mr. PRINDLE—I move to strike out the section, if it is in order.

The CHAIRMAN—It is not in order; there are two amendments pending.

Mr. PRINDLE—As I understand this section of the amendment proposed by the gentleman from Richmond [Mr. E. Brooks] it would compel the Legislature to tax all the property within this State, without any exception whatever. Last winter a law was passed exempting the bonds of certain towns along the proposed line of the Midland railroad from taxation. If I understand this section of the amendment proposed it will compel the Legislature to tax these bonds and assuredly defeat the building of the midland rail-

road. I think this section is wholly unnecessary, and that it is purely a matter for legislation. The section would encounter an opposition that is wholly unnecessary, and opposition that might defeat the Constitution.

The question was put on the amendment of Mr. McDonald, and, on a division, it was declared lost.

Mr. BICKFORD—I now move as an amendment to add after the word "State," in the fourth line, the words, "at its full cash value." There is no other proper mode of assessing property than on its full cash value. This rule should be adopted, both with reference to real and personal property. I hold that all property, whether real or personal, which is protected by the laws of the State, shall contribute equally to the expenses of the government of the State. In order that this may be done it should be assessed—both real and personal property—up to its full cash value. The practice, as everybody knows, is to assess it a great deal less than the actual cash value. The real estate in my section of the country is assessed at about two-fifths of its actual cash value; and the personal property is not assessed at all to any considerable extent. Now and then a man is assessed something on his personal property, but it is only on a very small amount of what he really owns. The law should be that every species of property which a man has in his possession and under his control should be assessed and taxed to its full cash value, and there should be no deduction on account of debts, for the property is equally protected whether the man owes for it or not. I agree entirely with the statement that the gentleman from Orleans [Mr. Church] gave, as his opinion on that subject, in response to the question which I put to him a while ago, that if a man owns a farm, and owes a debt which is secured by a mortgage on the farm, that farm should be taxed to its full cash value, and that the man who holds the mortgage should be taxed for that which is secured by the mortgage on the farm. And that principle is applicable to both real and personal property alike. It is the only correct principle which can be adopted. In reference to the assessment of property, I deem it necessary to put in this amendment because as it reads now this section only requires a uniform rate of assessment. But you will not make it uniform in fact and secure the ends you seek unless you provide that all species of property shall be assessed at its full cash value. The gentleman from Chenango [Mr. Prindle] has spoken just now in regard to the exemption of certain bonds, issued for certain railroad purposes from taxation. I agree with gentlemen who say that railroads in certain sections of the State are proper subjects for the aid and assistance of the State. I am in favor of allowing towns, counties, villages and cities to take stock in railroads if they shall choose to do so, but I insist that this aid by way of exempting their bonds from taxation is the most objectionable form State aid can take. It should not be adopted, or in any way encouraged. It is very objectionable indeed. I hope an objection founded upon that consideration will not prevail to defeat an amendment which is just and proper.

Mr. MURPHY—I am satisfied that we should strike out wholly the amendment of the gentleman from Chautauqua [Mr. A. F. Allen]. As to the amendment of the gentleman from Jefferson [Mr. Bickford] proposing that all property shall be taxed at its cash value, the gentleman, in that proposition, does not advance one step from the law as it now stands, and if we put that provision into the Constitution, we will have only the provision of the existing law. How does the gentleman's amendment read? "The Legislature, at the first session thereof after the adoption of this Constitution, shall provide for a uniform rate of assessment and taxation." In order to make his idea complete, he must strike out the words "uniform rate of," because that leaves a certain latitude; and put it "assessment and taxation of property at its cash value." As I said before, we do not advance any thing beyond the existing law. I think we had better leave the whole subject to the consideration of the Legislature. The Legislature will most certainly, in that respect, represent the wishes of the State, and we cannot here adopt a general provision on the subject without interfering with details which are of a legislative character, and which had far better be left to the Legislature.

Mr. CONGER—I concur with the sentiment advanced by the gentleman who has just taken his seat, that the more this matter is investigated the more worthless must this provision be esteemed. Look at it. Take the first section by paragraphs, or examine its separate clauses and see how futile the attempt has been to express by general provision what is in itself, as it appears to me, to a great extent impracticable. In the first place, the Legislature, at the first session after the adoption of this Constitution, is, by a general law, to provide a just and uniform rate of assessment and taxation of property—a work in which the Legislature has been engaged ever since we have had a constitutional form of government in this State. This work which the Legislature is to accomplish, and which is an obligation resting upon all Legislatures thereafter to assemble, is a work which, in the nature of human affairs, will never be perfected, because men's minds constantly vary, both as to the proper mode of assessment and the proper rule of taxation. You propose to put upon the next Legislature, meeting after the adoption of this Constitution, an obligation to do all the work of this kind which Legislatures have been engaged in doing since the first session of any Legislature under the Constitution of the United States, and to require them to effect, by a general and summary provision of law, that which they have heretofore failed to do adequately through many, many sessions and by many, many acts of legislation. The whole of this provision embraces an insoluble problem and one that it is wholly unnecessary for us to touch here. The motive which seems to lie at the bottom of this provision is the necessity of having a uniform rule. That seems to have been the motive in the mind of the gentleman who originally introduced it, and of those who favor it, that we must have a uniform rate; as if it were necessary for us to provide for such a uniform

rate in the Constitution of the State. We have that general provision secured in the Constitution of the United States, which says that "all duties, imposts and excises shall be uniform throughout the United States;" and until now I never dreamed that there was any thing that could be supposed to be more definitely settled than this, that all taxation, all rate and rule of taxation, must be uniform and just. As the Constitution of the United States reads, then, I can conceive of no necessity whatever for our confirming in the Constitution of this State the rule that taxation and assessment shall be uniform. If the rule of assessment is not uniform the rate of taxation cannot be uniform. The two propositions then are correlative, that assessment as well as taxation shall be uniform and just, so that, as long as the United States Constitution secures equal and just taxation throughout the Union, there is no necessity for our affirming a proposition touching uniformity of assessment in the Constitution of this State. As I before intimated the great difficulty in this matter is to secure a just and equal assessment of property. Now, instead of abiding by the rule which takes the judgment of men who are sworn to do the work impartially, it is now sought to bring in the sworn statement of the owner of the cash value of the property, as a substitute. And what makes it more objectionable is this, that the rule is to apply to all property in the State, to real estate as well as to personal property. Now look at the monstrosity of the proposition, that the owner of real estate is to make a sworn statement of the cash value of each parcel of the property he holds. Would such a rule as that work justice or injustice to the masses of the people? Is not the present rule by which three men, chosen by the body politic as competent, and sworn to discharge the duty, are called upon to determine the cash value of the property to be assessed, a better rule? For, although some gentlemen seem to think that the cash value of real estate is a thing very definite, after all, there is nothing more difficult to get at than the value of real estate, because its value depends, quite as much as the value of other things, upon the laws of supply and demand. A piece of real estate might one year be worth fifty per cent more than it would be worth the next year, or the prior year, according to an increased demand. I do not think it necessary at present to detain the Convention with any further remarks. It is sufficient at this time to show that the propriety of this section exists more in imagination and feeling than in reality, or in a just conception of what is constitutional, right and practicable; and as we have gone along under the Constitution of the United States for so many generations without having resorted to any fundamental provision in our State Constitution in regard to this rule of equality, so secured by the highest organic law of the land, it seems to me that we can safely continue.

Mr. S. TOWNSEND—Will the gentleman allow me to ask him a question?

Mr. CONGER—Certainly.

Mr. S. TOWNSEND—The gentleman assumes

that the Constitution of the United States covers this matter with reference to State taxation. Has he not overlooked the fact that in the Constitution of the State of New York as it now stands, the word "equitable," which to all intents and purposes means uniform, is used, and I would ask whether the Constitution of the State does not in that way provide for "equitable," that is, "uniform" taxation?

Mr. CONGER—I would be obliged to the gentleman if he would more particularly refer me to the section.

Mr. S. TOWNSEND—I have not the Constitution before me, but it is there; it refers to certain deficiencies in the revenue, and says that the Legislature shall, by equitable taxation, etc.—

Mr. CONGER—I would still be obliged to the gentleman if he would refer me to the section and clause where that permission exists.

Mr. S. TOWNSEND—I have not the Constitution before me, but it is there.

Mr. CONGER—Such a phrase as that which the gentleman has alluded to exists in the present Constitution, in the financial article which secures the public creditor against loss by reason of any possible deficiency in the sinking funds, but does not occur anywhere as an invariable rule for the levying of all taxes for the support of government. Without further specification it remains to add that this proposition is objectionable in every aspect in which it can be viewed, and I shall move to strike out the whole section.

Mr. M. I. TOWNSKND—I concur in the view of the gentleman, that in the present aspect of the matter, it would be more wise to strike the whole section from the proposed article. At an earlier hour in the discussions of this Convention, I had believed that this body was prepared to remedy some of the evils connected with our system of taxation in this State; that we were prepared to spread the burdens of taxation more evenly upon the property of the State, whether real or personal; but when I find that the Convention give but twenty votes in favor of bringing the personal property of the State within the purview of the assessor, I, for one, would be glad to see the whole subject withdrawn, rather than to expose those who pay the taxes of the State, to heavier burdens than are now imposed upon them. The proposition of the gentleman from Jefferson [Mr. Bickford] which we have rejected—I refer to it simply for an illustration—would only have had the effect to make the real estate pay a larger proportion of the taxation than it pays at present, and as personal property almost entirely escapes taxation now, I believe that no heavier burdens should be imposed upon real estate; and, as I believe that the evils under which this State groans cannot now be remedied, I should like to see the whole section stricken out. I feel it, however, not improper for me to say that a time will come in the history of this State when those who possess the personal property of the State will either voluntarily assume to pay their share of the taxes of the State and to bear their share of its burdens, or a condition of things will arise which every man interested in the property of the State will see occasion to regret. I say this

out of regard for the good feeling of the various portions of the State toward each other and out of a desire to preserve it, and I say it, believing that it is for the interest of every man that these burdens should be spread equally upon our property, to the end that an irritation shall not grow up between those who possess little and that little in real estate, and those who possess much and that much in personal estate.

Mr. OPDYKE—I desire to detain the committee a very few minutes in expressing my reasons in favor of adopting the section as amended by the gentleman from Richmond [Mr. E. Brooks], with a single clause added thereto, in words something like these: "except such as in its discretion it may exempt by law" The section will then direct the first Legislature that meets after the adoption of this Constitution, to establish a uniform rule and rate of assessment and taxation throughout the State, on all property in the State, except such as, in its discretion, it may exempt by law. Now, sir, my reasons for favoring this direction to the Legislature are these: The grievances under which we now suffer consist, first, in an inequality in the assessment of real estate in the different counties of the State, which leads to great injustice. The next and the more serious grievance is the want of uniformity in the assessment of personal property. I cannot say how it may be in other portions of the State, but in the city of New York and its surroundings I know that, through want of knowledge on the part of assessors, through the exercise of their caprice, and still more through an exercise of favoritism on their part, the inequalities in the assessment of personal property are most glaring and unjust. Now, these directions to the Legislature are such as, I hold, will compel that body to establish uniformity, not only in the assessment of the various classes of real estate, but also in the assessment of the personal property of the State. I suppose the only method by which they can bring about that uniformity in regard to personal property will be to follow the example of an adjoining State, and require the sworn statement of the owner of the property. How they will bring it about as to the assessment of real estate is for their wisdom, not our judgment, to determine; but if they can bring it about they will relieve us from a great grievance under which we are now laboring, and which is demoralizing the people of the State. I hope, therefore, that the amendment of the gentleman from Richmond [Mr. Brooks], with the additional words I have suggested, will be adopted. The amendment of the gentleman from Jefferson [Mr. Bickford], which declares that property shall be assessed and taxed at its cash value, is entirely unnecessary. It is sufficient that we secure uniformity. It is no matter whether the real estate or personal property be assessed at their whole value or at half their value—what we want is uniformity.

Mr. CONGER—I would ask the gentleman who has just taken his seat, whether he wishes this provision to be so stringent that every owner of real estate is to give a sworn statement of its cash value, or whether he wants the rule to apply to personal property only.

Mr. OPDYKE—In reply I will say what I have said before in this Convention, that after reflecting upon the matter somewhat seriously, I have been unable to decide by what plan the Legislature can bring about a uniform assessment of real estate; but I presume their own wisdom will be able to devise some plan to attain that end. In regard to personal property, however, I hold that there is no other means of obtaining this equality but by insisting upon the sworn statement of the owner.

Mr. CONGER—I am perfectly willing to concede that the most effective way of getting at the value of personal property would be by a sworn statement of the owner; but the gentleman must be aware that such a system of ascertaining the value of personal property will never be popular, and that a law providing for it would not stand long. With regard to inequalities of assessment in different counties, there is a law already on the statute book. Some years ago the Legislature appointed a commission to examine into that subject (I think that Mr. Peters of Genesee was chairman of that commission, and made a very elaborate report), and a law was passed to equalize the valuation of property in the different counties and cities of the State, so that that work has been already accomplished. What I wish to concentrate the attention of this committee on more particularly than any thing else, is to that part of the plan which presents this anomalous idea. While we know as a matter of fact and history, that the Legislature of the State of New York, since its first session under the Constitution of the State, has been attempting to perfect a system of uniform taxation and just and equal assessment, and has, in the opinion of the gentleman, signally failed to do that, we should now, by a special provision of this kind, direct the first Legislature which is to meet after the adoption of this Constitution, under some form of general law to accomplish the work. I do not wish to arrest this measure by criticisms on the verbiage of these provisions, but gentlemen will see that so far as the question of reform is concerned, a "uniform rate of assessment" is sheer nonsense; because there is no such thing as a "rate of assessment" aside from taxation—the rate is in the taxation, not in the assessment. What we need is a uniform rule of assessment, with a uniform rate of taxation. But I shall rest my argument against the justice and propriety of this provision, principally on this ground, that we are requiring the Legislature at its first session after this Constitution shall have been adopted, to do and perfect this work, which all the Legislatures of the State of New York have heretofore failed in doing.

Mr. BICKFORD—I am impressed with the propriety of the suggestions made by the gentleman from Kings [Mr. Murphy], in regard to what I said about a uniform rate of assessment and taxation, and I desire, therefore, to withdraw the amendment which I offered, and to propose another that will embrace the idea of the amendment I offered before, and will also meet the suggestions of the gentleman from Kings [Mr. Murphy].

No objection being made, the amendment was withdrawn.

Mr. BICKFORD—I move to strike out the whole section as it now stands, and to insert as a substitute, the following:

"The Legislature shall provide by law for the assessment and taxation of all property within this State, at its full cash value."

Mr. Chairman, I deem it objectionable that this should be required of only the first session of the Legislature, after the adoption of the Constitution. The provision should be a general one, not confined to any particular session of the Legislature. I believe that the substitute that I now offer is altogether preferable to the section as it now stands.

Mr. MURPHY—If the amendment, as now proposed by the gentleman from Jefferson [Mr. Bickford], provides for the assessment and taxation of property at its cash value, it makes no reservation for exemption, which has always been the policy of the State, and of all States to make to a greater or less extent. We exempt, I believe, farmers' tools and mechanics' tools, and property devoted to religious, educational and eleemosynary purposes of different kinds. But this provision is so strict that all property must be taxed, and the Legislature can make no exemption. So much for the details of this amendment. Now, in regard to the section as it will read generally, what do you accomplish by it? You make a direction upon the Legislature to pass a law for a uniform rule of assessment and taxation. It is a mere direction—it amounts to nothing. They will, or will not; there is no mandate upon them which is accompanied by any sanction which requires them to do it. The present Constitution, which we are now amending, contains several provisions of a like nature; one which occurs to me is the requirement upon them to provide laws to prevent cities from running into debt, and regulating the taxation of property in cities. The Legislature have never taken the first step toward it, by way of compelling them to consider it. After all, it is a matter lying in their discretion, to do or not, as they think proper. If we wish to accomplish anything for the purposes of taxation, let us lay down a rule which shall be the law itself, not requiring of the Legislature to adopt a rule. Then we will take some step in this matter of taxation; but as I said, when I was up before, that would be impolitic. You cannot lay down a rule with regard to taxation in the Constitution, because there are so many circumstances which affect the question of taxation, and the details of which we cannot put in a Constitution. My idea is, we had better leave this subject out altogether.

Mr. BICKFORD—At the request of the gentleman from Richmond [Mr. E. Brooks], I will withdraw my amendment for the purpose of enabling him to perfect the amendment he offered.

Mr. E. BROOKS—In accordance with the suggestion of the gentleman from Kings [Mr. Murphy] and others, that there are properly some kinds of property which ought to be exempt from taxation, such as church property, and edu-

cational property and charities, I propose to insert after the word "State" the words "except such as in its discretion may be expressly exempted by law." There is also a mere verbal amendment, which I am sure will not require a division of the house, to avert the criticism of the gentleman from Rockland [Mr. Conger], so that it will read, "provide by law for a uniform rule of assessment and rate of taxation."

There being no objection, the verbal amendment was declared adopted.

Mr. CONGER—If any thing, the amendment proposed would be still more objectionable because the language would cover more ground than the honorable gentleman from Richmond [Mr. E. Brooks] anticipates. To say the Legislature shall tax all property justly and equally, except such property as in its discretion it may exempt, would be equivalent to saying the Legislature might lay taxes after any fashion it pleases and by any rule of assessment it may see fit to adopt. The exception lying in the Legislature, would virtually confer upon that body a tyranny of taxation in the practical enforcement of some other rule than that we seek to establish, but vitiate by an exception that knows no law but the humor that varies it from time to time. We cannot, therefore, move in this direction without placing ourselves in opposition to the well established formula that all taxation should be equal and just. The difficulty which invades this whole subject centers in this fact, that the exemption of property from taxation lies in the discretion of the Legislature from year to year, and it is not susceptible of being rounded into a full orbed constitutional provision. It must be done from year to year, just as the necessities of society, interpreted by the wisdom of the Legislature, may demand. To say that you will have a uniform rule or rate of a fixed and unyielding character, to last for twenty years, is to establish a tyranny in the shape of a rule. To leave it modified in such a way as my friend from Richmond [Mr. E. Brooks] suggests, that at discretion, the Legislature may exempt certain classes of property, is to confer upon the Legislature the power to exempt any class of property or any individual property, and the burden of taxation would fall upon all the rest. I think we had better confess this to be an insoluble problem for constitutional remedy, and had better adhere to the practice which has grown up in this State for so long a period, of allowing the Legislature to do the best they can in attempting the solution of this problem, of making assessment and taxation equitable and just. If I felt this was not a part of legislation and that the practice was within the scope of the duties and functions of this Convention, I would not hesitate to propose the most sweeping changes upon the present rule of law, for I consider nothing more palpably unjust than the taxation of mortgaged property double and, in some instances, thrice the whole amount, first against the owner of the fee for its full value, and for the amount of the loan upon it as against the person of the mortgagee. A mortgage is a deed, voidable on the fulfillment of a specified condition. The mortgagee and the owner are, for all practical

purposes, joint owners of the property, and as joint owners only are they protected by the State. To say that the mortgagee is protected specially in his interest in that property, and at the same time to assert that the owner is protected to the full value of the whole property, is to assert that the State protects the same property perhaps for three halves of its entirety.

Mr. BICKFORD—I ask the gentleman, is not the owner and occupant of the land protected in his enjoyment of it? and, secondly, is not the mortgagee protected in and by the law which allows him to collect his interest and ultimately his debt—is he not fully protected in the enjoyment of his personal property?

Mr. CONGER—I will answer the gentleman very directly and plainly. If a farm is worth \$10,000 and the reputed owner of it, for some cause or other, gives a mortgage to some one for \$5,000, I ask the gentleman how much of the property does the State protect? \$15,000 worth of property or \$10,000 worth? If the property altogether is worth only \$10,000 it protects only \$10,000.

Mr. CHURCH—Will the gentleman allow me to ask him a question? The law now is, that in the case which the gentleman from Rockland [Mr. Conger] supposes for a farm worth \$10,000 and mortgaged for \$5,000, they are both—the farm and the mortgage—taxed to their full value, but that is not the case with personal property. I would like to ask the gentleman whether he does not think there should be an equality in taxation as between the real and personal estate, and if so, what is his recommendation?

Mr. CONGER—Certainly. I say there should be a just and uniform taxation of all kinds of property, as far as it is practicable to reach it. I have only been led into this discussion by way of illustration of the difficulty of obtaining a practical and uniform rule; not that I seek to ingraft any notions of mine on the Constitution. I say these reforms must necessarily and forever lie within the heart of legislative wisdom. But with reference to the idea as a generic proposition, I am willing to say, if the Legislature could be esteemed justifiable in taking real estate of the description and circumstances I have stated, and taxing it three halves of its value, that is, two halves in the person of the owner, and one half in the person of the mortgagee, then the Legislature would be equally right in taxing personal property, and in the same circumstances, where stocks or the like were unequally and unjustly under the same rule and pledged further. I do affirm, in my candid judgment, the rule itself is objectionable, and cannot be defended on principle. It is because governments extend protection to property that property is taxed. As it is, they cannot extend protection to property for more than its real value; they should not levy taxes on a sum greater than that value, and if that value is divided between two persons, under the form of deeds, it is but right and just that the Legislature should have regard to the conditions of the division, or joint ownership of the property, and work their rule accordingly. But they have not seen fit to do it, and I do not propose here to change the rule, for the reason I have already

stated, that it is not the subject of constitutional interference. But I adduce this, and many other instances might be adduced, to show how absurd it is to say that we will send our mandate down to the next Legislature at its first session, and require them to make a just rule of assessment, and a just rate of taxation for all property, when we see and have to admit that all of these attempts for the last three-quarters of a century have failed even to reach so simple a measure of justice as this, the restriction of all power to tax within the limits of the value of the property which is protected.

Mr. BICKFORD—I cannot allow the amendment offered by the gentleman from Richmond [Mr. E. Brooks] to be voted upon, without entering my protest against the principle of exempting any sort of property from taxation. It is a great and crying evil, which the people complain of, that there is so much property exempted from taxation. I would not object to the exemption of churches and places of worship to a reasonable amount or what is necessary for worship, but when a large amount of property is piled up in a splendid cathedral or church, merely for the purpose of ostentation and show, I insist that if the people wish to put their money in that sort of shape and require the law to protect it, that property should be taxed; but it is impossible to fix any definite amount for which a church should be exempt. The true and only practicable rule would require that all churches should pay taxes on their property the same as any other property, as it is protected alike; and if a church is not able to pay taxes upon its property, it should shut up its doors and cease operations. There are other exemptions prevailing under the statutes now. Ministers of the gospel are exempted \$1,500 on real estate; practically, speaking that is an exemption to the amount of \$4,500 or \$5,000 because the assessment is only about two-fifths of the actual value of the property, therefore it is a practical exemption of \$4,500 or \$5,000. There are other exemptions, as, for instance, the Legislature last year passed an act that every member of an artillery company or a cavalry company in this State should be exempt to the amount of \$1,000 on their assessments, and every member of an infantry company should be exempt to the amount of \$500; and that is felt to be a tremendous grievance among the people, as it withdraws from taxation a large amount of property, and it is a subject of very great complaint. Then there is this exemption of town bonds and other bonds held by individuals as a portion of their property, which is felt to be a very great grievance. I undertake to say it is not wholly without some grounds of justice that complaints are made that the holders of bonds issued by the general government, or any other governments or corporations, are exempted from taxation on those bonds. What the people want, what they really desire, is that all sorts of property should alike be subject to taxation, and help bear the burdens which rest so heavily upon the people of this State. I therefore hope that the amendment offered by the gentleman from Richmond [Mr. E. Brooks] will not prevail.

Mr. E. BROOKS—I wish to make a single

reply to the gentleman from Rockland [Mr. Conger], who opposes the amendment now pending. He says it is giving the Legislature of this State too much power and too much discretion, and that they may abuse that power, and therefore he stands opposed to the amendment. The amendment gives to them no more power than they possess this very moment. They can exempt churches, charities and educational institutions and whatever they please, which is a part of the property of this State, just as much under the existing law, which he is content with, as they can under the amendment which is now before the committee. That seems to be a proper answer to the objection he has raised to the amendment. But there are other reasons for the amendment now before the committee, which, it seems to me, commends the question to the judgment of this Convention. In the first place, the law is not uniform and the rate is not uniform and the property is not uniformly taxed; and the proposition to amend the existing Constitution in this respect is to make a uniform law, and a uniform rate, in order that justice may be administered in the equalization of the property under the existing statutes. The experience of my constituents has been just this, in relation to this question of assessment. The board of assessment met some years since, after considerable damage had been done to the quarantine property in the county of Richmond, and it seemed to be more as a matter of pique and spite, and by way of imposing pains and penalties upon the people of that county, for an indiscretion committed by a very few people, that they raised the taxation of that county one million dollars in a single year, and they kept up that advanced rate until very recently, when a sober second thought came upon the board of assessors, and they removed that burden of one million dollars. As the law and custom is, no uniform law on the rate, or in the imposition of this burden in the first place, and on the removal of it in the second place exists.

The question was then put on the amendment of Mr. E. Brooks, and it was declared carried, on a division, by a vote of 42 to 18.

Mr. E. A. BROWN—I move to strike out of the first and second lines the words "at the first session thereof after the adoption of this Constitution."

The question was put on the motion of Mr. E. A. Brown, and it was declared carried.

Mr. MURPHY—As the section now stands we propose to do what the Legislature has already done under the existing law. They have already provided for a uniform rule of assessment and rate of taxation. That is the law as it stands, subject of course to such exemptions as they in their wisdom think fit and proper. We therefore accomplish nothing by putting meaningless provisions in this Constitution.

Mr. COOKE—I understand there is a motion pending to strike out this section.

The CHAIRMAN—There is no such motion at present pending.

Mr. COOKE—Then I make that motion. There has been for a great many years, indeed as long as I have known any thing about public affairs, a

universal feeling throughout the State that taxation has been unequal, that the laws regulating the subject have been imperfect; and any man with any degree of intelligence can see that this dissatisfaction must, for years to come, increase as the burden of taxation increases upon the people of the State. I felt, therefore, when this question was first started in this Convention, very much inclined to support some proposition by which this evil might be remedied, and I looked favorably upon the proposition of the gentleman from Chautauqua [Mr. A. F. Allen] when he proposed it, as a basis of action for this Convention, to perfect if possible some system, without going into legislative detail, which would have the desired effect. But upon reflection, it seems to me it cannot be done. It is a matter wholly within the province of the Legislature, which has ample power to do justice in respect to this subject. It is their duty to perfect an equitable and equal system of assessment and taxation, it is a duty as incumbent and binding upon them as any duty is incumbent upon us. The discussion has progressed and amendments been adopted until we have got back now just about to where we started. The Legislature is commended by the section, as it now stands, to provide by law a uniform rule of assessment and rate of taxation, making such exemptions, however, as they in their wisdom shall think proper. The Legislature are required now to perfect just as good a system of taxation as they know how to, and to exercise their own discretion with regard to what property shall be exempted. I agree fully with the gentleman from Kings [Mr. Murphy] that it is not profitable to pursue this subject and to enact this provision in the form in which we have it before us. It is far better to leave it to the Legislature in the discharge of their duty without any admonition from us unless we have the time, the disposition, the facts and the data to go on and complete a system in all its details, and so provide a law for the government of the State for the next twenty years at least. I have, before now, since the opening of this Convention, expressed my disapprobation of any such course to be pursued by this Convention. I think our duties are not legislative; we are to provide limitations and restrictions upon the Legislature, to stand between the Legislature and the people. Now, in this matter, by this enactment as we have it, it seems to me impossible to arrive at any desirable result. To adopt the provision without the qualifying clause contained in the amendment last adopted, offered by my friend on the left [Mr. E. Brooks] would be the greatest absurdity in the world. It would subject every thing rigidly to taxation, giving no power whatever to the Legislature to create exemptions. The more this matter is looked at, the clearer, it seems to me, will it appear to every fair mind, that it is impossible for us to proceed in this direction and accomplish any valuable result. I do not appreciate very highly all those arguments founded upon the destruction or discouragement of enterprise by taxing personal property. That is always the cry, that if you tax personal property, if you tax debts, bonds, and that

kind of property, you discourage capitalists from investing their property in the State, that you discourage manufactures. That system of exemption is, in my judgment, the most objectionable form of protection. If one branch or species of business is to be protected in preference to others, let it be done directly, and do not let it be done by exempting it from taxation. It seems to me that this Convention can do nothing in the premises that the people can approve. A proper system of taxation, the Legislature have been endeavoring for years to make perfect, and I think they have made some progress. The Legislature has the power, for instance, to provide for creating incorporations. They give them their franchises and their privileges. Ought they not to have some power over their property to say what burdens should be imposed and what exemptions and privileges enjoyed, in respect to certain interests in certain property? This is a subject, as the gentleman from Rockland [Mr. Conger] says, that must be left to the wisdom of the Legislatures. We are to presume that they will be as patriotic, and as well disposed to subserve the public interest as we are, and we are not to undertake to bind them down for twenty years to come, to our particular views in regard to a matter so all pervading as this question of taxation.

Mr. S. TOWNSEND moved to strike out the section, and to insert the following in lieu thereof:

"Taxation for general State purposes shall be apportioned upon the several counties in the ratio of the number of their inhabitants."

Mr. S. TOWNSEND—I cannot agree with the gentleman from Ulster [Mr. Cooke], nor with the gentleman from Rockland [Mr. Conger], that we are to allow the fact, that no improvement in the mode of taxation has been made for twenty years, to discourage us. I believe any one who will reflect will see that many of the best inventions and most beneficent measures which have been adopted were originally laughed at, or scoffed at, in their incipency, and for the most part discouraged. This fact, because it has the importance of a rule, we should apply to our action. While I am, as much as any gentleman, against the descending by a conventional body into the particulars of legislation, I am desirous to aid and assist in every measure in laying down cardinal and scientific rules, so far as we can, for the carrying on of the government we are now framing; and, therefore, I think that the establishment of rules of taxation is a pertinent and proper measure for this body. As has been often said, no question has given rise to more complaint, or to more just complaint, than the irregularities of taxation. We all know that even twenty years ago the southern part of the State, by reason of the mode of the assessment of taxation, contributed to the trivial State taxation of that day far beyond the proportion of that part of the State. The State taxation at that period was a half mill or so. I remember stating, in the Convention of 1846, that a matter, which was then so indifferent, might by the unfortunate termination of the war then pending (the Mexican war), be so increased as to be very objectionable. I certainly

had no idea then that the legitimate demands of the State within twenty years, sanctioned by the conservative Comptroller of the State, would amount to thirteen million dollars, as I believe the present taxation will. While the inequalities of taxation as between towns is a matter that the county boards of assessors can regulate among themselves and the boards of supervisors, we should provide in the matter of State taxation for what the state board of equalizing assessors attempts to do, but does not do effectually, because if they did it effectually there would be no necessity for a provision of the nature I suggest. But they have not done it effectually. We have here a rule, a philosophical fact, interesting in itself, that in our population, with all its discrepancies of masses that locate themselves in certain parts of the State, foreigners if you please, the parallel between population and property runs very close as between county and county. If you look to the returns,—which, by the courtesy of the Comptroller, I have in my hand, although uncalled for by the formal resolution of this body—you will find this fact, that whenever a discrepancy or variation exists from that rule, it arises from the improper and unequal assessment of property in the several counties. There are some six or seven interior counties of this State where the assessors pay more respect to their duty than in others, which, under a provision of this kind, would pay a smaller amount of taxation than they now do, while others would pay more, and properly so, because, as it has been stated here, in some of our counties the rate of appraisement is in the insignificant proportion of one-fifth of the actual value. And now, with reference to the cities of New York and Brooklyn, of which I can speak from my own experience. I have property in the city of New York, well located too, and that within the last six years, I have offered to dispose of for the amount of the assessment in gold. This was in 1861-62, I think. And I have property in Brooklyn that approximates in its full valuation, to my property in New York. In that part of the State, and particularly in the city of New York, where we have to pay this year \$21,000,000 of State and local taxes, and where our proportion of the State tax of \$13,000,000 will be four or five million of dollars, while a just assessment would not be more than two millions, they have great grounds of complaint and great reason to look to this body to adopt some great principle by which justice will be extended to them. I leave to the gentlemen who especially represent that city, to pursue this further if they see fit. Now is the accepted time to correct that matter. I have stated before this morning that the question of the equitable apportionment of taxation is the gravest question we have before us. The amendment temporarily succeeded, I believe, which allows the Legislature the discretion of exemptions; which is a very important principle to pass without due investigation. We have already here our tables loaded with remonstrances against donations to public charities for sectarian or other purposes. What other principle, what other element is contained in these applications, than the very one we have passed upon

almost informally? If you give the Legislature discretion to exempt from taxation, is it not in direct opposition to the remonstrances and petitions presented to us? I would go with the gentleman from Jefferson [Mr. Bickford] who was willing to look at and to grasp this whole subject, and not allow the Legislature to exercise any discretion as to exemptions. This church property, this educational property, this property of scientific and benevolent institutions is as well protected by our laws as any other. What practical good do we effect if we make the rule separate and distinct as to them? Those of us that by various measures and ways are called upon to contribute privately to them, would only have to give a little more; but that little more would be balanced again by the reduction of our taxes that we pay. I do not care about detailing the Convention by pursuing the subject further. I have said enough to enable gentlemen to understand some of the views I entertain upon this matter, which I hope are in unison with their own; and I hope I have said enough to induce the committee to favor the proposition I have made.

The question being put upon the amendment offered by Mr. S. Townsend, it was declared lost.

The question recurring upon the motion of Mr. Cooke to strike out the section, it was agreed to, and the first section was stricken out.

The question recurring upon the second section of the amendment submitted by Mr. A. F. Allen.

Mr. E. BROOKS moved to strike out the section.

Mr. BICKFORD—I move, in order to perfect the section, to strike out all after the word "taxation" in the second line. The effect of this amendment will be to require that the Legislature shall not hereafter exempt any property or class of property from taxation. I made some remarks upon this subject before, and I do not think it necessary to repeat them now. The principle on which I go is this, that all the property in this State should be liable to taxation. For instance, this Capitol and the property owned by the State here, should be liable to taxation for city purposes, and all the property owned by the city should be liable to taxation for State purposes. The Erie canal and all other property owned by the State should be liable to taxation for local purposes, just as much as a railroad is liable for taxation for local purposes. It may be suggested that the Erie canal is a benefit to the counties through which it passes. That is true, but so is a railroad or a bank, or any property of any description a benefit to the town or place where it is located; but that is no reason why it should not be taxed. Property owned by the State should be liable to taxation for county purposes, and all property owned by counties, or towns, or churches, or ministers, or by any body that owns property, should be liable to taxation for the benefit which is conferred by its protection. That is the true principle, and unless that principle is adopted, it is of no use to attempt to adopt any constitutional provision on this subject. That is the true principle, radical indeed, but the only principle that amounts to any thing. If you do

not adopt that, all you do adopt, whether it is to be done by the Constitution or by the Legislature, is founded upon mere caprice—nothing else in the world. If you propose to exempt any thing from taxation, it is mere caprice that governs. There is a principle involved, and the only correct principle is this which I have stated.

The question was put upon the amendment offered by Mr. Bickford, and it was declared lost.

The question recurred upon the motion of Mr. E. Brooks to strike out the section.

Mr. S. TOWNSEND.—In striking out that section, I hope it will be understood that we rest on the clause of the present Constitution as to equitable taxation.

The question being put upon the motion to strike out the section, it was declared carried.

Mr. CHURCH moved to add to the article the following section:

"SEC. —. No money shall hereafter be drawn from the treasury of this State, except in pursuance of an appropriation by law and on warrant of the Comptroller."

Mr. BICKFORD—I will inquire if that is not already provided for in the article?

Mr. CHURCH—It is provided in another portion of this article that no money shall be drawn from the treasury, except in pursuance of an appropriation by law. To that extent it is a repetition of a previous portion of the article; but the material part of this amendment is that no money shall be drawn from the treasury of the State, except on the warrant of the Comptroller. The object of this amendment is to concentrate in one officer the responsibility of drawing money from the treasury of the State. Formerly, under the present Constitution, this was the practice. The Comptroller was the only person who drew money, or who was authorized to draw money from the treasury of the State. When other officers required money in the discharge of their duties it was necessary to get the consent of the Comptroller to draw the money from the treasury. But the Legislature—in dividing up the responsibility of State officers, which has led, I think, to a great deal of the difficulty we have had in the administration of the State government—has authorized two other officers to draw money from the treasury. One is the auditor of the canal department, who is authorized to draw moneys relating to the canals, and the other is the superintendent of schools, who is authorized on his own warrant to draw money from the treasury of the State. I say that we should have one officer to whom we can look and whom we can hold responsible for every dollar of money drawn out of the treasury. We should make this a constitutional provision, and thus go back to the protection which heretofore prevailed in this State, and which always prevailed until the Legislature undertook to divide the duties and thus to fritter away the responsibility of public officers.

Mr. ALVORD—I heartily concur with the gentleman from Orleans [Mr. Church] in the position he has taken in the amendment he has offered. So far as regards the matter of the public canals it is known that the moneys are drawn from the treasury

by the auditor. They should be drawn in all cases upon the warrant of the Comptroller. This amendment covers that case as well as the other case mentioned by the gentleman; and I trust we shall return to what was the practice before these changes were made.

The question was put upon the amendment offered by Mr. Church, and it was declared carried.

The CHAIRMAN—Certain other sections have been referred to this committee, which will be next in order, and which the Secretary will now read.

The SECRETARY read sections 10, 11 and 21 of the report of the Committee on the Powers and Duties of the Legislature.

The question was then announced upon section 10, which was read as follows:

"SEC. 10. The Legislature shall not give, lend or appropriate any of the money of the State in any manner to or for the use of any person, body of persons, association or corporation, except such appropriations as are allowed by sections—of this article."

Mr. BICKFORD—Section 11 of the report of the Committee on Finance was deferred until the Committee of the Whole should take up the report of the Committee on Charities. It strikes me, as that disposition was made of section 11, that it is proper that a like disposition should be made of section 10. I would, therefore, move that it be postponed until the Committee of the Whole shall take up the report of the Committee on Charities.

Mr. E. BROOKS—I hope that motion will prevail. It was certainly the understanding of this Convention when last in session, that this subject should not be acted upon until the report of the Committee on Charities should be considered. It seems to me that this strikes at the very vitality of the whole principle of charities. By this action of the Convention that subject was postponed; and I hope this motion will prevail.

The question being taken upon the motion to postpone, it was declared carried.

The question was then announced upon the following section, as follows:

"SEC. 11. The credit of the State shall not, in any manner, nor for any purpose, be given or lent to any person, body of persons, association or corporation, nor shall the State take, or be interested in, any stock of any company or corporation, except in payment of, or as security for, a debt previously due the State."

Mr. BICKFORD—If no amendment is proposed to that section, I will move to strike it out. This proposition strikes at the whole matter and raises the question whether the government of the State shall exist or be employed for any purpose of benevolence.

Mr. HALE—If the gentleman will give way a moment I will make this suggestion, that instead of moving to strike out the whole section the motion be to strike out all after the word "corporation," in the third line, so as to leave the section as it stands in the present Constitution, section 9 of article 7:

"The credit of the State shall not in any manner, nor for any purpose, be given or lent to any per-

son, body of persons, association or corporation.

Mr. SPENCER—I can probably propose an amendment that will meet the views of the gentleman from Jefferson [Mr. Bickford] without striking out the whole section, and secure the object at which he aims, and at the same time secure some of the objects which are sought to be secured by the provision. My proposition is to amend the section by inserting after the word "purpose," in the second line, the words "except for public use."

Mr. ALVORD—It strikes me that the committee, either through a mistake of the Clerk, or in some other way, are getting upon a ground already passed over. If gentlemen will refer to document No. 129, as given to us by the Clerk, you will find that this particular section was upon my motion proposed to be amended. My recollection, together with the recollection of the chairman of the Finance Committee, is that it was passed, although the Clerk had given it that it was laid over for future consideration. It has reference to this very thing:

"The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation. On the final passage, in either House of the Legislature, of every act which imposes, continues, or revives a tax, or creates a debt or charge against the State, or makes, continues, or revives any appropriation of public or trust money or property, or releases, discharges, or commutes any claim or demand of the State, the question shall be taken by ayes and noes, which shall be duly entered on the journals, and four-fifths of all the members elected to either house shall, in all such cases, be necessary to pass the same."

That was passed according to my recollection; and it is a substitute for this section which now appears for consideration. It is put here by the Clerk as if it had been laid aside, but it was absolutely passed, the Committee of the Whole disposing of the whole of this matter.

The CHAIRMAN—The Chair is informed by the Secretary that the section under consideration is one referred to the committee. The one referred to by the gentleman from Onondaga [Mr. Alvord], is the one in the report of the Committee on Finance.

Mr. CHURCH—That is so; but, I think the gentleman from Onondaga is right that the subject embraced in this has already been acted upon in committee. I confess my recollection was that this amendment offered by the gentleman from Onondaga was adopted by the Committee, but I may be mistaken about that.

Mr. COOKE—My recollection is, and I have so noted it on the document which I have in my hands—and I believe I had the honor of occupying the chair at the time—that these sections were all passed by as having been acted upon by Committee of the Whole having in charge the other article. This in particular, according to my recollection, was disposed of in that way. Some of them were reserved for the purpose of being referred to this committee. The Secretary must know better than I what disposition was made, but that is the way I noted it and so understood it.

The CHAIRMAN—The Chair will state that this is the record the Secretary made at the time; and we must be governed by the record in that respect.

Mr. SPENCER—I desire to say nothing further than that it seems to me wholly proper that power should be reserved to the Legislature to appropriate property in cases of great necessity, for such public uses as in the judgment of the Legislature may become necessary. I have already, in some remarks made by me on a similar question stated my views upon this question and do not propose to discuss the question any further. I merely make this suggestion for the consideration of the committee.

Mr. MURPHY—I was somewhat interested in the amendment as it now stands in document No. 129, and I have a distinct recollection of what transpired in regard to it. We had under consideration the eleventh section of the report of the Finance Committee, which is in these words:

"Neither the credit, nor money or property of the State shall be given or loaned to, or in aid of, any individual, association or corporation."

On that the gentleman from Orleans [Mr. Church] addressed the Convention, and insisted very strenuously upon the doctrine that the legislators should not be allowed to appropriate any money for any purpose, to any individual, association or corporation. I then proposed that the Legislature should be permitted to make these appropriations provided four-fifths of all the members present should vote for it. Then the gentleman from Onondaga [Mr. Alvord] took up the matter, and proposed the amendment as stated in document No. 129; and without taking a vote thereon the matter was passed over until we should dispose of other parts of this article. That never has been voted upon, I am certain, by the committee. I proposed originally that four-fifths of all the members elected to either house should in all cases be necessary to pass the measure.

Mr. CHURCH—I will suggest then that we take up and consider the proposition of the gentleman from Onondaga [Mr. Alvord], instead of the proposition referred by the other committee. It will be more appropriate to take this up and dispose of it. It is now the eighth section reported by the Committee on Finance, as amended. If the eighth section of that report has not been considered by the Committee of the Whole, it would have preference over the reference of the same subject from another committee, as it seems to me; and the record being that the proposition has not been passed upon, it seems to me that we should take that up and consider it now, being upon the same subject.

Mr. ALVORD—I will suggest, for the purpose of avoiding any difficulty with regard to these matters, that the simple proposition to strike out the section now before us and to insert the eighth section from document No. 129, will bring the whole matter in the shape proposed by the gentleman from Orleans, and I will make that motion if there is nothing in the way.

The CHAIRMAN—The question is upon the motion of the gentleman from Jefferson [Mr. Bickford], to strike out the section, but the

motion of the gentleman from Onondaga takes precedence of that.

Mr. MURPHY—I would inquire of the Secretary what disposition was made of the section No. 11 of the Finance Committee's report.

The SECRETARY—Section 11, of the Finance Committee's report, No. 66, as stated on page 4 of document No. 129, was under consideration, and this section was offered by Mr. Alvord as a substitute for that section. While this section was pending a motion was made to pass over the section, which was carried.

Mr. MURPHY—Why then, as a matter of order, should not we take up for consideration section 11 of the Finance Committee's report?

Mr. BICKFORD—Section 11 of the report of the Finance Committee was, as previously stated, deferred until the committee took up the consideration of the report of the Committee on Charities.

Mr. CHURCH—That is so.

Mr. STRATTON—On the 18th of September the eleventh section of the Finance Committee's report was under consideration, and, being under consideration, there was a motion made that it be passed and referred to the committee having in charge the report of the Committee on Charities. That is in the debates of the 18th of September, and it will appear upon the Journal also.

Mr. CHURCH—That is so; the eleventh section was referred to that committee.

The CHAIRMAN—The Chair is informed that the Secretary has no such record. The committee must be governed by the record of the Secretary.

Mr. BICKFORD—The truth is—and the gentleman from Richmond [Mr. E. Brooks], if he is here, will confirm me in it—that on motion of Mr. Kernan, of Oneida, section 11 was postponed until the consideration of the report of the Committee on Charities.

Mr. MERRITT—I understand that that could not be referred to the Committee on Charities, except by action of the Convention. If that is so, the Journal will show that fact; otherwise it is still in committee, although it was postponed with a view of referring it because it required the action of the Convention, and not of this committee. Therefore this section must be in committee unless it has been thus referred.

Mr. BICKFORD—Will it be in order to amend section 8, after having adopted the motion of the gentleman from Onondaga?

The CHAIRMAN—It will be in order.

Mr. MURPHY—I move to amend the motion, and that section 8 be substituted for the other section for consideration and not for adoption.

Mr. ALVORD—I see no necessity for any such proposition, although I have no objection to it, because after having been adopted by the committee it is still susceptible of being amended. I have no objection to using that phraseology "for consideration."

The question was put upon the motion of Mr. Alvord as modified, and it was declared carried.

The question was stated upon section 8 of the report of the Finance Committee.

Mr. CHURCH—Now I desire to suggest whether it will not be proper, or is not proper, to

pass over this section entirely in the same manner as we passed over section 11 of the original report. Section 11 of the original report contains the same subject embraced in section 8 and something more; that is, it provides that neither the credit, nor money, or property of the State shall be given or loaned to, or in aid of any individual, association or corporation. This only provides that the credit of the State shall not be so given. The committee have passed over section 11, which embraces the whole subject until the Committee on Charities shall have acted; and I suggest whether it is proper to take up a portion of the subject embraced in section 11 without considering the whole of it; whether we had not better, therefore, pass this over and let it follow the result of the action of the committee on section 11, when the report of the Committee on Charities shall be considered.

Mr. ALVORD—I do not know what others may have had in view in the adoption of my motion, but it struck me at the time that it was a solution of this whole question without the necessity of referring it to the Committee on Charities and that we might end the controversy upon that subject entirely. If gentlemen will look at the original proposition, it is that "neither the credit, money nor property of the State shall in any manner be given or loaned to, or in aid of, any individual, association or corporation." Members who desire charities or aid to railroads desire that the money or property of the State shall be given to them. The proposition that I make here goes to the extent desired by the Committee on Finance so far as the credit of the State is concerned. It goes to the extent that the credit of the State shall not be given or loaned to these matters; but so far as regards the money or property of the State, to be paid directly out of the treasury or upon taxation, that may be given, provided four-fifths of the members elected to the Senate and the Assembly shall see fit so to do. That is the proposition exactly. That is the solution of the whole question, both with regard to aid to railroads and with regard to aid to charities. It requires four-fifths of all the members elected to give, and in no case as it stands can the credit of the State be loaned to these institutions. If the Convention is ready to meet this question, it appears to me that that ends all the discussion that can by possibility be had upon these two questions of charity and aid to railroads; and if that can be settled here, it seems to me that this is as good a place to settle it as any.

Mr. BICKFORD—I hope that section 8 will not be adopted as it now stands. For instance, if I understand the reading of it rightly, no law which imposes a tax, or continues or revives a tax, or creates a debt, or any charge against the State, can pass the Legislature except by a vote of four-fifths of the members elected. It is impossible to do business under such a provision as that. You cannot lay a tax without a four-fifths vote, not even a tax for the support of the government. It will not do, sir, to inaugurate such a constitutional provision as this. You cannot continue the State government under this. It says that four-fifths of all who are elected to

the Legislature shall vote for a tax—a tax to carry on the State government. Let us read it:

"On the final passage in either house of the Legislature of every act which imposes, continues or revives a tax, or creates a debt or charge against the State, or imposes, continues or revives any appropriation of public or trust money or property, or releases, discharges, or commutes any claim or demand of the State, the question shall be taken by yeas and nays, which shall be duly entered on the journals, and four-fifths of all the members elected to either house shall in all such cases be necessary to pass the same."

It is utterly impossible to continue the government of the State under such a provision as that, certainly if it could be continued it would be good for nothing and might as well be discontinued. I move to strike out all after the word "corporation" in the third line, so that it shall read:

"The credit of the State shall not in any manner be given or loaned to, or in aid of, any individual, association or corporation."

Mr. E. A. BROWN—In the absence of the chairman of the Committee upon the Powers and Duties of the Legislature [Mr. Rathbun], and of Mr. Rumsey, who also took considerable interest in that matter, I will call the attention of the committee to one or two sections that have been acted upon. On page 6, of document 98, at the bottom of the page, is the section: "The Legislature shall not give, loan or appropriate any money," etc.—the section which relates to the donation of property or giving of the money of the State to any purpose. On page 7, of document 98, is a section which relates not to the property or the money of the State, but to the credit of the State, and nothing else. It is precisely the present Constitution, with the addition of a few words: "The credit of the State shall not in any manner, or for any purpose, be given or loaned to any person, association or corporation." And these lines are added: "Nor shall the State take or be interested in any stock of any company or corporation except for payment of, or security for, a debt previously due the State." I suppose the object of that was to provide for making the thing certain—that the thing should not be done by subterfuge or excuse indirectly which the Constitution says directly, in so many terms, shall not be done. This seems to have been abandoned, from the statement of document No. 179, and we have section 8, the beginning of which contains substantially the provision of the present Constitution down to the middle of the third line. I have no particular argument to make in favor of substitution. It seems to be conceded upon all hands that the provision restricting the use of the credit of the State should be made as it was made in the former Constitution; and it seems eminently proper that this question about which there seems to be no difference of opinion with regard to the use of the credit of the State should be acted upon by itself and then afterward we can take up and dispose of the question which is controverted—the question under what circumstances and for what purposes the property and money of the State should be donated or given—to charitable purposes, to corporations, to railroads,

or for any other purposes. So far as regards the motion of the honorable gentleman to strike out the latter part of that section, I am in favor of it. I do not know that the provisions in the other section are of any particular use with regard to the State's becoming the owner of property as security for debt. I am not aware that this is of any great importance, but I am decidedly in favor of disposing of the question as to the credit of the State by itself, disconnected with the use that may be made of the property of the State by taxation or otherwise.

Mr. CONGER—I have only a few thoughts to bring to the notice of this Convention on this general subject of appropriating the money and the credit of the State. Theoretically the State is only the trustee of the people; having attributes of sovereignty, it is the sovereign trustee for the people. The property is the property of the people and not the property of the State as a sovereignty. Of late years, ever since it has become the fashion to make the supply bill a great deal larger than the regular appropriation bill—to take money whether it is in the treasury or out of the treasury and appropriate it on the omnibus plan—the notion has sprung up (and it is one of the radical errors of the age), that the State has the money and the property to dispose of as it pleases in some other than the fiduciary relation which it sustains to the people. The notion is now, probably, pervading more minds than gentlemen would be willing to admit, that the Legislature has the right to impose taxes on the people on the pretense that they are for the purposes of government, and then, when the money comes into the treasury, to use it for any other than the necessary expenses of government—for any purpose that the majority of those who log-roll bills see fit to devise. I consider this fundamentally wrong. Any notion of a power to be given to the Legislature in regard to the appropriation of moneys derived from taxation that is based on this idea must inevitably result in disgrace and in great dissatisfaction on the part of the tax payers. When the Legislature imposes a tax for the purposes of government, the tax should, as a matter of justice and good faith, be restricted to the objects for which the tax is levied. If any are disposed to vary that proposition, and give the Legislature some reasonable discretion, I think there are very few who are willing to go as far as this and say that the Legislature has a right to wring money from the tax payers of the State, and then call it a fund of the State and loan that money as they please to persons who may apply for it from time to time. Now, it has so happened that in almost every case which has come within my notice in the last ten years where money of the State has been loaned for the purpose of some improvement or for the purpose of erecting some beneficiary institution, the result has been disastrous, and the State, in order to protect itself in its claim as mortgagee, has been compelled to take back the whole property. I do not wish to anticipate what may be said or ought properly to be said in regard to the report of the Committee on Charitable Institutions, but I am willing here in restricting myself to a bare proposition and to at-

tempt an infallible thesis, to say that the State owns no money that comes into the treasury except in its fiduciary capacity as trustee of the people of the State, and with special reference to the matter before us of the tax payers, from whom by taxation its money is derived, and that it is bound, according to principles of good faith, to appropriate money only for the purpose for which the tax is raised. Therefore I have no difficulty whatever in saying in this Constitution that neither the credit nor the money of the State shall ever at any future time be loaned to any person or persons, because it is not a part of the business of government to tax people and lend the money to a few favorite individuals or to promote a few favorite schemes or speculations. It has no right to go into the business of loaning money after it has procured that money by taxation. Therefore, I hope the original proposition of the chairman of the Committee on Finance will prevail. And if there is an opportunity now for an amendment, I will move an amendment to that effect—that the word “money” be inserted before the word “credit.”

Mr. MURPHY—The gentleman from Rockland [Mr. Conger] has re-opened a question which I supposed had been settled by this Convention. The point to which he has addressed himself was fully discussed at the time this section was formerly before the Convention for its consideration. Now, I am unwilling to go over this debate again; yet I must protest against the doctrines which are advocated here by that gentleman. He says the State or the Government, or the Legislature,—I think, he used the term “State,” however, is the trustee of the people. That is a curious idea to me.

Mr. CONGER—If the gentleman will allow me I will correct him. I said that the State as the owner, or reputed owner of property is the trustee of the people who own the property. I do not deny the State should have and exercise functions of sovereignty under the Constitution of the United States. The proposition I stated is that as the reputed owner of property the State is the trustee of the people for the purposes for which money is raised, and no other.

Mr. MURPHY—I think I have not misrepresented the gentleman. The Legislature, when they meet, are the representatives of the people; in other words, they are the people themselves for the purposes of legislation. They are not acting in a fiduciary capacity; they are acting in an original representative capacity. They are acting as the people. I repeat, that to my mind, the doctrine is preposterous that the people shall not, by their representatives, dispose of their property as they may think proper. The gentleman says that money raised by taxation should be applied for the purposes for which it is raised. We all agree upon that point. There is no room for discussion there. The gentleman mistakes in supposing that such is not the case. When the Legislature appropriates money for any purpose it always provides that a tax shall be raised for the purpose of meeting the appropriations; and money raised by tax is never applied for any other purpose than that for which it is raised. The State officers have the duty upon them of making the applica-

tion, and the Legislature has no power over it.

Mr. CONGER—Will the gentleman from Kings [Mr. Murphy] allow me a suggestion? If that were so, if the bill was first passed and the money appropriated was to go into a regular appropriation bill, so that some future representatives of the people may refuse to approve the action of the Legislature, then the doctrine is correct. In the majority of cases these appropriations of the supply bill are made when there is no money in the treasury, and no knowledge on the part of any member of the Legislature, or the chairman of the Committee on Finance, whether appropriations have been made sufficiently ample to cover all the expenses. So that we are speaking of a thing not so much, as my honorable friend seems to think we have spoken of it, as a proposition in the abstract, but an attempt to remedy a great evil which has grown up from time to time to make the supply bill sometimes just as large as the regular appropriation bill. To refresh his memory I will state what I may have stated before, that when the supply bill of 1853 was reduced to something like three hundred and fifty thousand dollars, and attempts made to sustain the committee by reducing the taxes for the subsequent year to half a million, the next Legislature that took its seat made a supply bill of one million three hundred and fifty thousand dollars, and that was wholly independent, as the gentleman will understand, and outside of the regular appropriation bill, so that the advocates of these extra supplies and drafts upon the treasury—

Mr. MURPHY—[Still standing.] Does the gentleman desire to make an argument on this matter?

Mr. CONGER—No! no.

Mr. MURPHY—Because if he does I want to know it, as I have only one leg to stand upon. [Laughter.]

Mr. CONGER—No sir; I only wanted to have him understand me by trying to draw his attention to the just distinction between appropriation bills and supply bills.

Mr. MURPHY—I repeat that all the monies that are raised by taxation, according to the practice of government ever since I have known any thing about it, have been applied to the purposes for which they were appropriated, and no other; the appropriation always precedes the tax, and the tax is laid to meet the appropriation. The true question for our consideration is: shall the people, through the Legislature, retain to themselves the power of making donations or bestowing charities in such cases as they think their interests and honor demand; or shall this sovereign State abdicate and renounce the power of raising by taxation any moneys for such purposes? Now, let us review the state of this question at present. The existing Constitution provides that the credit of the State shall not be given or loaned to any individual or corporation, a very proper provision, against which no voice has been raised in this Convention, and which should be retained. It was intended to prevent the abuse of the Legislature, not having before it the necessity of raising money by taxation, and

not having the pressure upon it of public sentiment against unnecessary burdens, postponing the evil day and committing the State to measures which ultimately required taxation. That abuse has been corrected, but no one attempted in the last Convention, nor is it sound policy, in my opinion, to provide that the State shall not, upon any emergency which may arise, bestow money raised by taxes. I repeat to the gentleman from Rockland [Mr. Conger], such has been the practice. The appropriation has always preceded the tax. So far as I know, it is a general rule which has met the approbation of the people of the State. Still there was pressed upon the Convention by the gentleman from Oueida [Mr. Kernan], who is not now in his seat, with great force, the idea that where the Legislature might, by what is called log-rolling—that is, combination of interests in different parts of the State—vote away large sums of money without a just consideration of the merits in individual cases, a system which is not defensible, and by which, in fact, the true sense of the people of the State is not obtained. Therefore, in order to obviate that objection, I proposed, when the eleventh section of the report of the Committee on Finance was under consideration, that in all cases where the money should be given away there should be required at least four-fifths or two-thirds of all the members elected to both houses to give their assent thereto, so as to prevent the success of such combinations. The section immediately under consideration goes a great deal further. It strikes me the objections taken by the gentleman from Jefferson [Mr. Bickford] are sound; that it would be very unwise to declare that any act which imposes or continues a tax shall require a four-fifths vote. Do we not know that in practice, perhaps in a majority of cases, tax bills are only carried by a small majority—a bare majority of the members in the Legislature? There is always such a conflict of interest that it would be impossible to procure the passage of a law creating a tax under this provision. It is a subject which really and truly has no connection with the question under consideration. The eleventh section related only to two subjects, loaning the credit and donating the money and property of the State. We should confine this section to these two provisions. I therefore concur with the gentleman from Jefferson in striking out the latter part of this amendment with a view of perfecting the section further, by a provision to the effect that in giving away the money and property of the State for charitable and other purposes, the assent of four-fifths of the members of the Legislature (or three-fourths perhaps would be better) shall be necessary in order to pass the law.

Mr. CONGER—I dislike very much to intrude upon the attention of the committee and much more to seem to differ from my friend from Kings [Mr. Murphy] in the interpretation of what is the law and practice of the Legislature in regard to raising money by taxation. But I think my honorable friend will, on reflection, discover that his statement of the manner in which moneys are raised which are appropriated or paid out under what is called the supply bill are not raised, as he

imagines, in advance. Every second year the Legislature declares that certain moneys shall be paid for the support and expenses of the government, and the appropriations are made under these bills in advance. The Legislature steps in every year with what used to be called the deficiency bill to meet little expenditures which had been overlooked or forgotten in the regular appropriation bills, and these moneys were originally small in amount, so that the balance left in the treasury on a half or a quarter of a mill tax, was sufficient to meet them. In that sense it might be, as the gentleman has affirmed, that the money taken by the supply bill was money which had been appropriated the year before and raised by tax. But when you come to the later and more modern method you see crowded the heaviest appropriations into the supply bill, and then the rule and the practice with reference to the taxes as levied was just the reverse. Of course I cannot undertake on my personal knowledge to say what has been the practice in every one of the last ten or twenty years in the Legislature; but I can state to this committee on my own knowledge that in 1853 the financial measures were all perfected, all the amounts, whatever they were, and whatever their purposes, were summed up, and the tax was ordered to be levied to meet those appropriations. I wish the committee, and my honorable friend from Kings [Mr. Murphy], to understand that I do not consider that the re-insertion of the phrase "money of the State" in this clause alone is to interfere, of necessity, with what the State ought to do in the matter of charitable institutions. When the State undertakes to establish a charity it should never dream for one moment of loaning the money, so that if the committee should adopt the original provision of the Finance Committee, and re-insert the phrase "money" as well as "credit," there will be no impediment in the way of adopting a proper and judicious rule in regard to charitable institutions. I am perfectly willing in advance to make a distinction between State institutions and local institutions for charitable uses, and to recognize the State charitable institutions as the proper objects of State appropriation. I wish gentlemen to bear in mind that the amendment I proposed is that no money should be loaned, not "given"—but no money shall be loaned. And I think that principle rests on a sound financial principle, for the money and the credit of the State should go together. When the Constitution of 1848 was adopted, do you suppose it entered into the minds of any one of the framers of that instrument that after having inserted a clause that the credit of the State should not be loaned, that power was implied to take money out of the treasury of the State by taxation for State purposes, and then take that money and loan it to individuals or associations? I trust the Committee will have no difficulty in going back to the original proposition of the Finance Committee, bearing in mind that it is money as well as the credit of the State that is to be loaned.

Mr. MURPHY—I have no manner of objection to the simple provision that the money shall not be loaned as well as the credit; but that is

not the original proposition of the Finance Committee.

Mr. CONGER—O, yes, it is.

Mr. MURPHY—O, no.

Mr. CHURCH—The original proposition of the Finance Committee was that neither the money nor the property of the State should be given or loaned in aid of any individual association or corporation. Now, it seems to be the disposition of the committee to consider this question at this time, and it is proper, therefore, that I should explain precisely the propositions before the committee upon this subject. It is a subject of very great importance, and one that should be considered carefully by the members of this committee. I agree with the gentleman from Jefferson [Mr. Bickford] in his remarks on the amendment under consideration. I think it would be very unwise and improper on the part of this Convention to restrict the Legislature in making the ordinary appropriations of the public money, to the requiring of a vote of four-fifths of all the members elected to either house. That would prevent the Legislature from appropriating money for the ordinary expenses of government except upon this vote. I do not think this restriction is necessary, nor wise, nor proper. But the question as to what authority we should confer upon the Legislature in giving away the money of the State, is an important and serious question. My own judgment is that the Legislature should be restricted in the exercise of this power. I think experience has shown that if this dangerous power is invested in the Legislature it leads to the extravagant appropriations of money. It leads, as we know, to combinations of interests for the purpose of log-rolling through a series of measures which involve a large expenditure of money, and to drawing heavily upon the treasury. I think the people of this State desire to restrict their agents in this respect. I do not quite agree with my friend from Kings [Mr. Murphy], if I understood the gentleman in his remarks, as to the propriety of this restriction. It is not a question of whether the people of this State have the power to give away money; that is not the question. It is a question as to how much power the people of the State may vest in their agents; how much power they will confer upon their agents in this respect; shall it be uncontrolled, absolute power of appropriating money in any way they see fit? Is it proper to give them the whole power of appropriating the public money without any restriction or limitation? The gentleman from Kings [Mr. Murphy] would not be in favor of restricting the power conferred upon the agents of the people.

Mr. MURPHY—Mr. Chairman, my argument was that the Legislature was the people. The question was how far it was expedient for the people to restrain themselves. I was willing to make a restraint to the extent of requiring the assent of three-fourths or four-fifths of the members elected, the assent of three-fourths or four-fifths of the people—to the giving away of the public money; but I will say, that from time immemorial up to the present time, the Legislature have had the power which the gentlemen ask if I would give to the people. Now, I do not

think there is any great harm in leaving to the people what they have always possessed, the power to appropriate their own money.

Mr. CHURCH—The difference between the gentleman and myself is that I do not think the Legislature is the people. The Legislature is the agent of the people.

Mr. MURPHY—They represent the people.

Mr. CHURCH—The Legislature for this purpose, is the agent of the people; and the question is, how much power shall the people confer upon their agent in appropriating public moneys?

Mr. MURPHY—It is suggested here that the Legislature will represent the people next year. [Laughter.]

Mr. CHURCH—The Legislature may represent the people rightly, or, it may not; but the question is how much authority to appropriate public moneys shall the people confer upon the Legislature, their agent. Now, I insist upon it that experience has shown the necessity of some restriction. I believe that above all other things the people of this State desire of this Convention that it shall make stringent and rigid provisions on the subject of appropriating the public money. If there is any one thing which more than another induced the calling of this Convention, it is the necessity for this restriction. If there is any thing in the action of this Convention which has the approval of the people, it is the disposition which has been manifested, and which I trust will continue to be manifested, to impose restrictions upon the powers of the Legislature; and you cannot go into any part of this State and suggest this question to any public meeting of any political party, without finding the response unanimous in favor of making these restrictions. Now, it seems to me that standing here as we do, to represent the people of the State of New York, it is our duty to carry out their expressed wish in regard to this matter.

Mr. MURPHY—Will the gentleman allow me to interrupt him?

Mr. CHURCH—Certainly.

Mr. MURPHY—Do I understand the gentleman to say that in every part of the State the people desire that we should take entirely away from the Legislature the power to vote away their money or property for public purposes?

Mr. CHURCH—I do not undertake to say to what extent the people would carry these restrictions, but I do say that, in my judgment, and according to my belief, the people in every part of this State are in favor of imposing additional restrictions upon the legislative power to appropriate public moneys.

Mr. MURPHY—I doubt that.

Mr. CHURCH—Very well. Now, the question is, to what extent we should go. The original report of the Committee on Finances prohibited the Legislature from giving or loaning any money or property for any purpose. Of course that prohibition applied to appropriations for charities as well as for all other purposes; but, upon the best consideration I have been able to give the subject, I do not think that we can prohibit the Legislature from making appropriations for charitable purposes. I do not believe that we can impose an absolute prohibition upon that subject, but I

insist upon it that for all other purposes we ought to apply an absolute restriction and prohibition. All appropriations for railroads, or to be given to railroad corporations, every kind of gift for any purpose which does not come under the head of charitable should, in my judgment, be cut off and prohibited; and that question I desire this Convention to pass upon distinctly, so that it may be clearly understood whether it is the sentiment of the Convention that this restriction should be imposed or not. For the purpose of bringing this question before the committee, I propose a substitute for the whole of the section, and I will read it:

"Neither the credit, money nor property of the State shall in any manner be given or loaned to, or in aid of, any individual, association or corporation, except for charitable purposes. On the final passage, in either house of the Legislature, of any act making appropriations for charitable purposes, the question shall be taken by ayes and noes, which shall be duly entered on the Journal, and three-fourths of all the members elected to either house shall, in all such cases, be necessary to pass the same."

This amendment simply prohibits the giving of the money or property of the State for other than charitable purposes, and for such purposes, it requires a vote of three-fourths of the members.

Mr. MURPHY—I do not know why the gentleman restricts it to charitable purposes. There are a great many other purposes which it should be the business of the State to aid as well as those which are charitable.

The CHAIRMAN—There are two amendments already pending, so that the amendment now offered by the gentleman from Orleans [Mr. Church] is not in order. The question now is on the amendment proposed by the gentleman from Rockland [Mr. Conger] to the amendment proposed by the gentleman from Jefferson [Mr. Bickford].

Mr. CONGER—I will withdraw my amendment so as to permit the gentleman from Orleans [Mr. Church] to offer his.

Mr. MURPHY—I now ask for the reading of the amendment offered by the gentleman from Orleans [Mr. Church].

The SECRETARY read the amendment.

Mr. MURPHY—I repeat, Mr. Chairman, that there are a great many purposes beside charitable purposes for which the State appropriates money, and which appropriations are quite as defensible as those for charitable purposes. It has been the policy of the State from the first foundation of the government to appropriate moneys for the endowment of colleges and for educational purposes of various kinds, and it appears to me—

Mr. CHURCH—Will the gentleman allow me to explain? If the Convention desire the word "educational" inserted I have no objection; but I understand it to have been the policy of the State of late years not to make special appropriations for educational purposes, except so far as they can do it from the trust fund in the possession of the State for those purposes.

Mr. MURPHY—What trust fund?

Mr. CHURCH—Trust funds belonging to the various school funds for educational purposes.

Those are not, strictly speaking, the moneys of the State.

Mr. MURPHY—Then whose moneys are they?

Mr. CHURCH—They are trust funds for those purposes.

Mr. MURPHY—I do not see any difference between the moneys of the State, whether belonging to trust funds or not. It seems as proper to appropriate money from one fund as from the other. I do not understand, either, that the practice has been to make appropriations for educational purposes solely from the trust fund. For instance, last winter there was an appropriation of \$50,000 for the Female College at Elmira.

Mr. CHURCH—That came out of the tax fund.

Mr. MURPHY—Well, that is a case which shows that there are many purposes besides those which are charitable for which the State may properly exercise its benefaction. The gentleman has left out of view the main idea of his article. As I understand him now, he does not intend to interfere with any internal improvements that the State may order.

Mr. CHURCH—That is in another section which has been rejected by the committee. I desire to take a vote upon the thing in committee, but it is an independent section.

Mr. MURPHY—Then there remains one other class, and that is cases in which the State has been in the habit of giving aid to different corporations or associations for the purpose of advancing public improvements, and those I suppose are what the gentleman aims at. We have from time to time made appropriations in aid of corporations for building railroads, for making canals, and for other purposes, which were thought by the Legislature beneficial to the public at large, and not for the interest of the State to assume the entire responsibility of. The building of the Susquehanna railroad, the building of the Champlain railroad, and others, have been aided by the State by subsidies. Now, I suppose it had been competent for the State to build those railroads itself, but certainly it would not have been to its interest. We have had, perhaps, enough public improvements made by the State in the shape of our canals, but the policy has always been considered sound, that where we can promote a public improvement by giving a small subsidy, where we can aid in developing the resources of the State and add to the means of its enterprise and industry, we should do so; and I confess that this is my opinion. Therefore, I shall vote against the amendment of the gentleman from Orleans [Mr. Church].

Mr. M. I. TOWNSEND—Not having had the honor of acting on either the Finance or the Canal Committee, I have not rendered myself as competent to speak upon the financial questions that come before the Convention as many other gentlemen upon this floor, and I approach any question of this kind with some little degree of hesitation; but, sir, I understand this matter sufficiently to enable me to form and hold a very decided opinion as to what is for the best interests of this State upon several subjects involved in the amendment now before the committee. I do not believe it to be for the interest of this State to stop the wheels of improvement where

they are, and determine that they shall not roll forward hereafter. I have read of giants that were tied with small cords so tightly that they could not move at all; and I always considered that that giant when so tied, was, notwithstanding his great proportions and the natural strength that was in him, a very contemptible being. For one sir, I am not disposed to weave about the giant State of New York cords that will prevent motion for all time to come. The gentleman from Orleans [Mr. Church], tells us that go where you will in this State, and address any assembly of any party, you will find the people in favor of imposing restrictions upon the Legislature. I concur with him. But I do not believe, sir, that you can go into many assemblages in this State and find the people willing to render the Legislature powerless, to render it a nullity, to say that the State of New York shall have, from this time forward, no power of doing good, no power of aiding really useful objects, no power of promoting her own prosperity. I understand that the committee has adopted a provision that localities shall, from this time forward, never be permitted to aid in the development of the resources of the State by lending aid to the building of railroads. The proposition that is now under consideration will prevent the State from lending any aid to railroads, and what is the result? Why, sir, that from the time of the adoption of these two provisions the development of this State by railroads is practically to cease. It is said, if capital can find its profit in building railroads let capital build railroads, and they will be built; but, sir, this State has other interests than the promotion of profits on capital. This State has an interest in rendering its lands valuable, in promoting intercommunication between one part of the State and the others, in increasing manufactures and building up the remote and unsettled portions of the State, and facilitating intercourse between them and those portions of the State that are comparatively well settled. Let me ask how much of what has been done by railroads to develop and improve this State has been accomplished by unaided capital? There are certain lines through the State where capital will find its account in building railroads; but those are mere threads leading through portions where great interests concentrate, and only in those places. This State has been benefited by hundreds of millions of dollars in its prosperity by the railway on the southern line of counties, called the Erie railroad. Could capital, unaided, have built, did capital build that road, or was it built by the combined efforts of the localities directly benefited, and the power of the State? We have a railway from my own city, constituting now a portion of the great line of railway called the Central railway. In the building of that railway our locality had the aid of a \$100,000 loan from the State. Every dollar beyond that \$100,000 was raised upon bonds of the city of Troy, which we have paid, and gladly paid, though we have lost it all; but \$5,000,000 contributed to the treasury of the city, would not compensate us for the loss of that improvement. It will be found, sir, that in every part of the State where they are now accommodated with rail-

roads, they have had the aid of the State in building them, and where that did not suffice, they have had the aid of the credit of the localities. Would any man in this Convention now say it was unwise to lend the credit, or rather the money of the State to the Susquehanna railroad? Would any gentleman here take back the legislation which is to develop the resources of the north by a railroad from Whitehall to Plattsburgh? And if it was not unwise in these cases to give State aid, shall we now say that the entire State shall never do the same thing anywhere else, in time to come? Shall we say that Delaware county is never to have a railroad—that Sullivan county is never to have a railroad? Shall we say that that region lying undeveloped in the north-west part of the State, nearly as large as the whole State of Massachusetts, and with soil probably more productive than the original soil of Massachusetts, is forever to remain a wilderness? Sir, this is not my notion of what the State should do; it is not my notion of the powers that should be given to the people in Legislature assembled, or the representatives of the people, or the agents of the people, or whatever you choose to call those men who meet here annually to legislate for us. But there is another remark that I wish to make, and I want this Convention to ponder it. Is there now being made, in this State on the part of the people in any locality, any complaint that the Legislature has been guilty of any wrong in giving the money of the State to develop the resources of the State by the building of railroads? Is there any donation of this kind for the last twenty years that is complained of by any body? I say, without fear of contradiction, that there has been not only no wrong done of this kind, but that nobody complains of any wrong. Then, if, under the Constitution as it now stands, there has been no wrong done in this direction, and nobody complains of any wrong, why make any change, why go further, why say that the three quarters of our State which are now without the accommodation of railways shall never have such accommodation? Now, sir, I would not have the State do more in the future than it has done in the past in regard to this matter. The things that require to be done, cannot be done all at once, and it would be unwise to make large appropriations at once, and so the Legislature has thought. The appropriations that have been made for these purposes in the last twenty years, have been made at distant intervals and in small amounts. I would make a restriction requiring that three-fourths of the members of the Legislature should vote for an appropriation of this character before it could become a law, but I would not say that the Legislature of the State should not have power to aid in developing its own resources. Why, sir, the States of the West that have sprung into existence within a few years, where twenty years ago there was scarcely a human being except the savages—those little States are better accommodated with railway communication than we of the old State of New York, the Empire State; and I cannot vote for a Constitution that proposes to stop the wheels of progress, and I trust that the people of the State

will not vote for it. I have seen something of the people of the State since the adjournment, and have conferred with them to some extent, and I have found nobody who wants to do this. We are undertaking to do a work that we are not asked to do. What the people of the State are very much more exercised about is this matter of donations to charities. I have my own views upon that subject. I believe, and I may as well say it here, I believe that the public feeling upon that subject is to a certain extent mistaken. I believe that donations to charities have not been so erroneously made as many suppose they have been. But I do not deem it important. I make my objection to the present amendment simply on the ground that this, taken with the other action of this Convention, is to render it impossible from the time of the adoption of this Constitution, for the State to do any thing to aid in the development of its resources by building railroads or other public improvements.

Mr. CONGER—I will undertake very briefly to draw the attention of my friend from Rensselaer [Mr. M. I. Townsend], and those who may agree with him in the general propositions that he has advanced, to considerations such as I will name. In the first place we have already secured, in an article which passed without any dissent, a limitation to the power of the Legislature, as representing the State, to enter into or contract debt. We have provided that they shall not, for any purpose, however necessary, or well calculated to promote the public weal, enter into any general indebtedness that shall exceed a million of dollars; and in the next place we have a provision, the propriety of which no one has disputed, that they shall not contract any other debt except for the purposes specified in the ninth and tenth sections of this amended bill, without submitting the same to the people for their approval; so that the argument which my honorable friend from Rensselaer draws from the necessities for internal improvements in other portions of the State, to balance those which have been already made by what is called State aid, is not an argument on the main question, but is an argument to be considered and decided according to the test that we have already adopted.

Mr. M. I. TOWNSEND—Will my friend allow me to ask him a question?

Mr. CONGER—Certainly.

Mr. M. I. TOWNSEND—If the amendment now proposed should not be adopted, any proposition to create a debt would still have to be submitted to the people; but if this amendment should be adopted, a proposition in regard to a railway could not be passed by the Legislature at all. Is not that the effect? It was to that point that I directed my remarks.

Mr. CONGER—Hardly as far as the limit that my honorable friend assigns. If the work is a work of considerable magnitude, and of such importance that the State should give aid to it directly or indirectly, why should not the Legislature submit the question to the people and let the people decide that.

Mr. M. I. TOWNSEND—I agree with the gentleman that these propositions should go to the people; I have no sort of objection to that; it is

because the law cannot be passed at all, if this amendment passes, that I find fault with it.

Mr. CONGER—There would be no difficulty whatever if the honorable gentleman from Rensselaer [Mr. M. I. Townsend] and his friends, who wish to insure the possibility of aid extended to railroads, will agree that any advances of that kind should come within the class of general debts referred to, and that bills authorizing the same be submitted to the people for approval. But the absurdity of the schemes now seeking support here is manifest. While we, in the Constitution, restrict the whole State from accumulating or entering into any one debt, or any two or more debts, that shall exceed a million of dollars, we propose to allow the Legislature to take out of the moneys raised by taxation, from year to year, \$750,000 in one case and \$3,000,000 in another case, and so on, and there is nothing in this Constitution to prevent it; so that while you limit the State, for general purposes of the State, to a debt of one million of dollars, or to the necessity of submitting the bill for raising money to the people, you give the Legislature the power to take treble, quadruple—decuple, it may be—that sum out of the taxes paid into the treasury. And you are not willing to insert a restrictive clause to prevent it! I hope the gentleman will see that we must, in order to be consistent or barely prudent, maintain this guard upon the treasury and upon the funds of the State supplied by taxation, and provide some other way for relief for the cases which have been adduced. I will go as far as any one in modifying what has been passed in committee, and support any provision by which all these plans of improvement by State aid should be submitted to the people. I do not wish to have this Constitution, when it is perfected, open to this objection: that we will debar the whole State from incurring a debt exceeding a million of dollars, and at the same time allow the Legislature to take any sum they see fit and proper, from year to year, out of the tax-paid funds of the State.

Mr. ALVORD—I think it has been already settled, over and over again by this committee and this Convention, that there shall be no such proposition entertained as to authorize the Legislature ever to loan the credit of the State, under any consideration whatever, for any purpose. Now, it resolves itself into the simple proposition, whether we will authorize the State to give, by direct taxation upon the people, or out of the treasury from the moneys therein, not otherwise appropriated, for any of these matters. There is no sort of question but what there is a feeling abroad among the people of this State, and it is a very general one, that there has been a looseness and a laxity of operation in the Legislature in this regard, which, in some way or other, should be tied up and restricted. While I, in common with a great many others, agree that very much has been done in the past in the direction of benefit and advantage to the State, by granting aid to corporations, yet I believe that is liable to a great deal of abuse, and has, in some instances, absolutely been abused by the Legislature. It is easily done, there is no sort of difficulty whatever in it, and the people are not represented in the

matter. A B, representing one locality, comes to the Legislature with a proposition for the benefit of his particular locality; another member comes with a proposition from another portion of the State, and they come here and compare notes, and while neither one, standing upon its own foundation, would commend itself to the majority of the Legislature, where they combine together, either in the form of one bill, or with arrangements, that one shall be the pioneer bill and the others shall pass in their turn, they get enough votes in the Legislature, in both houses, to pass the measure. Upon a great many of these things, if decided on their own merits, separate and apart from this combination, the people speaking through their representatives and their agents here, would vote emphatically "no." Now, sir, what is the next best step to take so as to avoid, if possible, this combination and this arrangement, by means of which these things are passed through, and still take care of those matters which are entitled to the consideration of the people of the State, through the Legislature. I trust that before we get through, we shall come as near as possible to the position of taking care of those interests spoken of, and at the same time so hedging every matter, that there cannot be, by any possibility, any great amount of wrong done to the people by thus taking the public money for private uses. I trust, therefore, when the proposition of the gentleman from Orleans [Mr. Church] shall be voted upon and shall have been lost, if such is the sense of the committee, I shall have an opportunity to offer this amendment. Striking out all of the section as originally proposed by me after the word "corporation," in the third line, and insert: "and no money or property of the State shall hereafter be given or loaned to, or in aid of, any individual, association, or corporation, unless such gift or loan be specifically contained in an act, upon the final passage of which, the question shall be taken by ayes and noes, and which shall be entered on the Journal, and the same shall not become a law unless three-fourths of the members elected to each house shall vote affirmatively thereon." I think if we have a provision of that kind, the result will be, it will be almost an impossibility for a combination of matters, which are not entitled to consideration, to get in both houses the necessary amount of votes; but where there is a matter which commends itself to the good sense and judgment of the Legislature, and which would be approved of by the people generally throughout the State, benefiting or advantaging any portion of the State, it will be enabled to get this vote, and in that way we can come nearer to what are the actual desires of the people in this regard, than we can under the present form in which these matters are passed through the Legislature.

Mr. CHURCH — Will the gentleman allow me to ask him a question? The only change which the amendment makes in the present Constitution, is in relation to the proportion; it requires three-fourths instead of two-thirds.

Mr. ALVORD—I will answer the gentleman directly; he is mistaken—a decision has been made in the celebrated case of the Albany and

Susquehanna railroad, that it partook so much of the nature of a public work, that it did not require but 65 votes in one house and 17 in the other.

Mr. CHURCH—That is the only difference, it will require three-fourths instead of a majority.

Mr. ALVORD—It will, require 96 in the lower house instead of 65, and 24 in the Senate instead of 17. It is placing so much more guard against the abuse of this right, by the power of the Legislature. I would be willing to put it at four-fifths, but I somewhat doubt whether the minds of the members of this Convention are made up to that point.

Mr. MURPHY—Will the gentleman allow me to suggest; this amendment he proposes alters the provision for loaning the credit, and instead of making that an absolute provision as it is now, it leaves it for three-fourths.

Mr. ALVORD—No, sir, the proposition is to amend so it will read "The credit of the State shall not in any manner be given or loaned in aid of any individual, association or corporation, and no money or property of the State shall hereafter be given or loaned, etc." It is a positive prohibition to the credit of the State, under any circumstances, being loaned or given to any corporation or individual.

Mr. W. C. BROWN—It appears to me the only effective remedy for the evil which is sought to be avoided here is the adoption of the amendment as proposed by the gentleman from Orleans [Mr. Church]. If I believed with my friend from Rensselaer [Mr. M. I. Townsend], that the adoption of that amendment would "stop the wheels of progress," or would "render the State of New York utterly helpless, like a giant bound with cords," I certainly should oppose the amendment offered by the gentleman from Orleans [Mr. Church]. But I think my friend from Rensselaer cannot be serious in supposing any such great evil would follow the adoption of this very beneficial measure. The time was when the people of the State of New York were so poor, in their infancy, that canals and railroads could not be built except with the aid of the State; but that time has long since passed by, and the time is now when individual men are able of themselves to wield greater amounts of money than the State of New York was herself then; and there is no difficulty in railroads being built by private enterprise and private capital wherever and whenever they are really necessary for the accommodation of the public and really ought to be built. In the northern part of the State, which is generally considered the poorest part of the State, we have two great railroads, one extending from the St. Lawrence to Lake Champlain, and the other from Ogdensburgh to Rome, with branches in different directions, all of which were built by private enterprise. The State of New York was appealed to by one of these roads, I do not know but by both, but utterly and entirely in vain, except that some thirty years ago, the State appropriated \$30,000 to survey and ascertain whether it was practicable to build a railroad through that neglected region; and that is all the aid we obtained from the State. The gentleman says there is no complaint in any part of the State against these

appropriations of money. I tell him there has been complaint, deep and bitter complaint, on the part of the people of that section of the State, who have been compelled to provide themselves with railroads as best they could, without aid from the State, every time the tax-gatherer comes around to levy upon their property or take their money for the purposes of donating it to corporations in other parts of the State. These donations can never be just or right; every donation of the money of the State for the construction of a railroad is always and necessarily partial and unjust. It is taking the money of the people of one portion of the State and giving it for the direct and immediate benefit of individuals in another portion of the State, and often to the very prejudice of many of those whose money is taken by taxation for these purposes, levied as a forced contribution to establish or sustain a rival enterprise.

Mr. DALY—The objection I have to the amendment proposed by the gentleman from Orleans [Mr. Church], is, it proposes to change the fundamental law, and proposes to affect it by an operation of which we can say, it is not warranted by past experience. The existing Constitution prohibits the loaning of the credit of the State. This amendment proposes to prohibit the Legislature from giving the money or property of the State to any association or individual, with one exception, that is, for charitable purposes; a suggestion was made by the gentleman from Kings [Mr. Murphy], that it was customary to make donations for educational purposes, and I understood the gentleman from Orleans [Mr. Church], to be willing to include that. But it is impossible to calculate in advance what would be the effect of a sweeping provision of this kind. The question arises, what is the necessity for it? and has there been any necessity for it in the past? The gentleman on the other side of the house [Mr. W. C. Brown], says that the people of the State complain of the giving of money and property of the State. Under what circumstances have they complained, and of what gifts or donations? Have these gifts or donations been abused? Has abuse increased so and multiplied so, that it is necessary that the Constitution should restrain the Legislature absolutely hereafter from any thing of the kind? It is a wise rule, not to make important and organic changes in the fundamental law, unless the nature of these changes have been indicated by past experience. No gentleman yet upon this floor has shown any previous abuse, or that the donation of money, to associations or corporations by the State, has been productive of any such abuses. Why is this done? Because associations and corporations take from the State a portion of the duty it ought to perform; in the instance of charities, that would be incumbent upon the whole people of the State to do the duty which charitable associations or individuals perform. So in regard to corporations, they perform functions, if you please, for individual purposes or projects, but which relieve the State from a portion of those responsibilities. It is only in such circumstances, and should be only in such circumstances, that public money is donated for the encouragement

of enterprises of this kind. We should not pass fundamental provisions of this kind in the Constitution, without it has been justified by some past experience. If there is such a feeling upon the part of the people of this State which demands an amendment of this kind, that feeling is founded upon facts which justify its existence.

Mr. BICKFORD—I am content that a provision should be inserted in the Constitution absolutely prohibiting any loan, or a debt of the State, for the purpose of giving away the money. But there I must stop. I cannot go any further, and I feel certain that any attempt to go any further than that, is not only a departure from the previous policy of the State, but it is also a departure from sound principle. It was never supposed necessary to restrict the Legislature upon the power to tax the people, until the assembling of this Convention. Never did I hear it proposed by any body, that the Legislature, chosen by the people and responsible immediately to the people as a whole, and each individual composing it, to the people of his district or locality; that it was necessary to restrict such a body in the imposition of taxes. It is a new doctrine, sprung upon us here, and this is the first instance where the wisdom of man has deemed it necessary to make such a restriction. It will be unpleasant for me, unused as I am to legislative bodies, to combat with gentlemen of the experience of the gentleman from Orleans [Mr. Church] in his position or any position he may take. But I had the honor sometime ago to address this Convention in advocacy of the principle, that the government of a State might be beneficent in its operations and in its action, and that it was its duty to be so. The gentleman from Orleans attacked that position, and stated distinctly that the only object for which government was instituted, and for which it could be legitimately used, was to protect the people in their persons and in their property, and after that they should leave each individual to take care of himself, and that that was the only proper function of government. Now, sir, he is departing from that, and he offers an amendment here to the effect that government may employ its power and its property, and the property of the people of the State, for charitable purposes; and if I remember right, some gentleman undertook to excuse him for that inconsistency, by saying that charity was sometimes necessary to protect the lives of men, which of course is a mere quibble. Now he is ready to concede educational purposes also. Are not people protected in their lives, in their persons, and in their property, without charity and without education? Upon what principle does the government of the United States maintain a post-office? It is not upon the principle of protecting the people in their lives or property. It is on the principle of doing good, of being useful, and of accommodating the people. It is on the principle of beneficence, and for the purpose of doing good, accommodating the people, and aiding them, and assisting them, and rendering life more happy and of multiplying its blessings. On this principle it is that the State very properly takes care of the interests of education, as it increases the happiness and well-being of the people of the

State. On that principle it is that it was proposed to collect money from those of the people that are able to pay to give it in charity. Now, what is the definition of charity? Do you confine it merely to giving to paupers, to people who are poor, and to supplying them with daily bread and necessary clothing? Is that all the idea of charity? Charity is the same as general benevolence or love. That is the idea of charity; it is a very broad term; it embraces every good deed that man can do. When you talk of charity it is not confined merely to helping those that need assistance to secure their daily bread. Charity in a broader and more comprehensive sense means good in general, or general benevolence. That is the proper idea of charity. Now, sir, as every gentleman who hears me, is aware, the government of this State has undertaken a great work in the Erie canal, which was a blessing to the State at large, but more abundant to certain sections. May not the blessings bestowed on the friends of this work be equalized in this State? May not the gentleman from St. Lawrence [Mr. W. C. Brown] claim and properly claim that the State should reach out its beneficent arm into the poorer sections of the State and aid them? There are localities in which railroads are needed, as for instance through Schoharie county. Individuals realize that; and those who are able subscribe, but there is not quite enough. Then they call on the towns to take stock, and the towns take a certain amount of stock, but yet there is not quite enough to build the road and then it is proposed that the State shall step in with its great means and with a view of equalizing its beneficence and doing equal good to all, and give a little timely aid, just to turn the scale, just to decide the difference between building the road and not building it, and by a little aid thus timely given a great amount of good may be done. But if the State is to be niggardly and not help or do anything, the good which might thus be accomplished will not be accomplished. It is most unjust, as has been repeatedly stated in this Convention, and as the gentleman from Rensselaer [Mr. M. I. Townsend] justly and properly said, when you have prohibited towns, counties, villages and cities (and one gentleman went so far as to say any territorial division of the State, even an election district) from taking stock in railroads, or doing anything whatever in a corporate capacity to aid them; having bound these localities thus hand and foot, then you propose to go on and say that the State shall do nothing. After the State has done so much already to aid other localities, you say here is the line where its beneficence shall stop; henceforth the State shall do no good; henceforth the State shall exist merely for itself. The representatives of the people shall meet at Albany and legislate only for the State, to pay their own wages and the salaries of the officers who may be employed; but they shall do no good; they shall exist merely for the purpose of keeping up a show of government. Government is not instituted for any such purpose. It is instituted for the good, the prosperity, the happiness and well being of the people; and all the previous Constitutions which

have been framed in America have proceeded on this principle, that governments exist for the happiness and prosperity of the people, and unless they exist for that purpose, they have no legitimate purpose whatever, and should not be sustained. If all the object of government is to protect the people, why not have a strong government, like that of an emperor or king, who can command the power to protect the people; why go to the expense of electing officers, and all the expense of a republican form of government, which is really after all more expensive, because there is such a variety of ways for expending money. It is much better to establish a monarchy to protect the lives of the citizens than to keep up this expensive form of government unless government is to exist for the benefit and good of the people.

Pending the remarks of Mr. BICKFORD, the hour of two o'clock having arrived, the PRESIDENT resumed the chair, and the Convention took a recess until seven o'clock P. M.

The Convention re-assembled at seven o'clock.

Mr. CHURCH—I have a motion to make in reference to the pending business before the Convention, modifying somewhat the motion I made this morning. If it is in order, I move now that the report of the Committee on Finances be not considered in Convention until the end of next week. I repeat, again, that I am obliged to leave to-night myself, and should be glad to be here when it is considered in Convention, and I can see no objection to that, because when the committee get through it can be laid over and other business may be taken up and considered, and this can be taken up and considered in Convention after my return.

Mr. VERPLANCK—Will the gentleman from Orleans name some day certain?

Mr. CHURCH—I will put it for a week from next Tuesday, the 26th.

Mr. VERPLANCK—I have no objection to that.

The question was put upon the motion to postpone, and it was declared carried.

Mr. VERPLANCK—And that it be fixed for consideration upon that day.

Mr. CHURCH—I have no objection that it be made a special order for that day.

The PRESIDENT—That requires a two-thirds vote.

Mr. ALVORD—We can make it a special order for some subsequent day.

Mr. VERPLANCK—The only objection I have to that is this: Some of the amendments to the report of the Committee of Finances were carried in committee by a small majority. My business is quite as important for a few days as that of the gentleman from Orleans [Mr. Church]. My constituents expect and desire me to be here when the question comes up. If that question can be considered on the 26th I have no objection to its being considered then; but as I am obliged to be in Washington after the first of December, and can not be here, I wish to have it made a special order, so that it can be

taken up at the time named. Gentlemen will recollect that I have taken some interest in this matter, and my constituents are more interested than any other people in the State in the report of the Finance Committee. I therefore ask that these reports be made the special order for the 26th inst.

Mr. CHURCH—I presume there will be no objection to that.

The PRESIDENT—There being no objection these reports will be considered as the special order for consideration in Convention on the 26th inst.

The Convention again resolved itself into Committee of the Whole on the consideration of the reports of the Committee on the Finances of the State, and of the Committee on Canals, Mr. SMITH, of Fulton, in the chair.

The Chairman announced the pending question to be upon the amendment of Mr. Church.

Mr. BICKFORD—I had nearly concluded, at the time of adjournment, all that I intended to say. When the hour of two arrived I was saying that the chief advantage of republican governments over monarchies was that in the republican form of government the people by their representatives could direct what the administration of the government should be; to see to it by their own care and attention to public matters that the government was so directed, so conducted as to subserve their prosperity and happiness rather than the prosperity and happiness of those who happened to be in office. The doctrine of the gentleman from Orleans as to his theory of government is new and is contrary to the teachings of the fathers. For instance, the Constitution of Virginia which was formed just before the Declaration of Independence, and while the principles of liberty were young and vigorous and fresh in the minds of the fathers, asserts that of all forms of governments that is the best which most promotes the prosperity and happiness of the people. Such was the tone and the spirit of all earlier American Constitutions, indeed of all the American Constitutions down to the present day, with one or two exceptions. The theory on which the gentleman founds his ideas of government is entirely visionary, and I add that it is undemocratic. This idea of requiring three-fourths of all the members elected to pass any bill is entirely contrary to the principles of democracy or republicanism, and that vital principle which should govern in this country, that the majority shall rule. I was taught early that the prime article in democratic ethics was this: "Absolute acquiescence in the will of the majority, constitutionally expressed." If that is not democracy, what is democracy? If we are not to be governed by the will of the majority, by what shall we be governed? Gentlemen have talked in this Convention about the tyranny of the majority. It is all absurd to talk about the tyranny of majorities. When the majority rule, their rule extends to themselves. When the majority tax, they tax themselves; and when they pass laws, those laws are binding upon themselves. It is not like the rule of a minority, which passes a law to govern the majority. That is tyranny. I do not like tyranny

in any form. I detest it from my inmost heart—all sorts of tyranny and oppression; and if there is any sort of tyranny that is more abhorrent to me than another, it is the rule of the minority. I dislike it. Now the minority will rule when one-quarter or a little more than one-quarter of the members elected can legislate, can dictate what the policy of the Legislature shall be. For instance, nine of the Senators out of thirty-two and thirty-three members of the Assembly can dictate to the majority of the Legislature what its action shall be. It is the tyranny of the minority. It is anti-republican; it is anti-democratic. It is contrary to the spirit of our institutions, and all features of that kind should be stricken from the Constitution and should find no place there. What we need for a good frame of government is that we should make a Legislature that it shall be an honor to sit in; that the gentleman from Orleans may desire to sit in the Assembly every year and deem it an honor to be chosen to sit in every year; that it shall be the object of his ambition, and that it shall be the object of the ambition of the best men in the State. When we have such a Legislature at that, you can expect good legislation, and you may trust them. If the government of this State is not to be beneficent—if there is no good to be done, I do not wish to live any longer in the State of New York. If the power of the people of this great State is not to be exercised for their own good, or the good of the people, the whole people, the people of every part of the State, then I do not wish to live any longer in the State, but I wish to go somewhere where the rule of the people is for the benefit of the people. I rejoice that I live under a general government, the action of which is beneficent. I see them building the great Pacific railroad, by which the States of the Pacific are joined to those upon the Atlantic, which is rapidly approaching completion by the aid of the government of the country. It is right. I rejoice in it. It should be so. It is the beneficent exercise of government. Government supplies us with a post-office, and with other accommodations, and it is as it should be; but if it exists only to punish crime, if that is all it exists for, we can get through with some other form a great deal cheaper than the form of republican government.

Mr. OPDYKE—As I deem the pending question a very important one, I ask a few minutes, to express my views in favor of the substitute offered by the gentleman from Orleans [Mr. Church]. Let us ascertain in the first place, the nature and the precise extent of the change which that substitute proposes to make in the present Constitution. It proposes to take from the Legislature the right to give or loan the money or property of the State to individuals, associations or corporations; and it proposes, also, to restrain the Legislature somewhat from making charitable donations, requiring a larger vote for the passage of such bills than the present Constitution requires. This is the whole extent of the change proposed, and, brought down to its essence, it is simply this: That the Legislature shall not hereafter be allowed to give or to loan the money or property of the State for the construction of-

railroads, canals or other business enterprises, whether under the control of individuals, associations or incorporations. That is all there is of it. Now, the question is, whether it is proper that that power should be left to the Legislature, or that it should be taken from it. My friend from Rensselaer [Mr. M. I. Townsend], with whose views of public policy, as expressed upon this floor, I have often found myself constrained to differ, and never more widely than as expressed upon this question, declares that to take from the Legislature that power would arrest the material progress of the State, and throw a paralysis over its entire business enterprise. He further declares that there never has been any wrong perpetrated by the Legislature under the right that it is proposed to withhold; and that never has a murmur of complaint been uttered against it for any thing that has been done in virtue of that power. With great respect I must differ with that gentleman on all these points, and I must differ with the gentleman from Jefferson [Mr. Bickford] in regard to the beneficence of all such legislative action. Upon that point I will say a few words presently. This giving, by the Legislature, of the money or property of the State to private business enterprise, what is the true character of the transaction? Rightly understood, it is the taking of money from the tax payers of the whole State, and paying it into the hands of individuals or private incorporations, for their personal gain. It either gives it to the individuals who receive it or to the stockholders of the incorporation who receive it; or it goes to benefit the owners of property in that section of the State through which their improvements run; or else, as is often the case, it is invested in improvements that yield no benefits to any one, and is, therefore, thrown away. Now, it does not benefit the people of the State at large, from whom the taxes are collected; but, as the gentleman from St. Lawrence [Mr. W. C. Brown], told us this morning, it is often injurious to them by developing the resources of a given locality, and thus bringing its products to market more cheaply than theirs, through which the value of property in all other portions of the State is diminished. The gentleman from Rensselaer [Mr. M. I. Townsend], has cited the Albany and Susquehanna railroad as one instance where the exercise of this power by the Legislature has produced a beneficent result. Let us see whether it has or not. It has received from the State, I think, about a million of dollars as a free gift, and whom has it benefited? In the first place, whence came that money? It came from the pockets of the tax payers. Into whose pockets has it gone? If it has gone into the pockets of any one it has either gone into the pockets of the shareholders of that railroad, or into the pockets of the owners of the land in the district of the State through which it passes; but not a dollar has been returned to the pockets of the tax payers from whom it came. In other words, it is an act of legal robbery. It taxes the whole people for the benefit of a favored few. No one pretends that it adds to the value of the property in the northern, or western, or south-western portion of the State. It is only in

that locality that it has afforded any benefit at all. Is it just to take from the whole by taxation and put it into the pockets of the few? In my judgment it is the very essence of injustice, the very opposite of beneficence. It is a gross wrong and outrage, and it cannot result in good. What is the motive that prompts individuals to ask it? It is that they have not either the sagacity or public spirit to develop their own resources. Because, if the given improvement has merit sufficient to warrant its construction at all, that is to say, if it will produce more benefit than the cost of its construction, the people of the section which is to be benefited by it should know that fact and should have public spirit enough to carry it into execution. If they have not, they should be the sufferers, and not the people of other portions of the State who have no interest in the question at all. But, as I said before, it often happens that an enterprise is an illegitimate one. Its results will not justify the expenditure. What then?

Mr. BICKFORD—Will the gentleman allow me to ask him a question? I would like to know what he means by his remarks. Does he mean that the stock is good and affords a dividend? Is that his idea—that it is paying stock?

Mr. OPDYKE—I will explain, with pleasure, to the gentleman. In the first place, an enterprise of this kind has no aspect except the pecuniary one. It can only be looked at in an economic point of view. It benefits the State in no other way. Therefore, its results must be measured in dollars and cents. It must be measured in the revenues of the improvement itself, or the benefit it confers upon the neighboring land, or in these two put together. If the benefits accruing are not equal to the expenditures, it is an illegitimate enterprise and a loss to somebody, and it should be a loss to themselves and not to the people of the whole State, who have no interest in the enterprise. There is another step in the progress of this class of legislation. The very moment you give to the Susquehanna railroad a million of dollars for the special benefit of the stockholders of that road and the owners of property in that section of the State, you at once engender a brood of claims, founded in justice, from every other portion of the State, for pecuniary aid for similar improvements. They will say to the Legislature "You have given a million of dollars to this section of the State; ours is equally needy, and we claim it as a right that aid shall be given to us." They will come, not from one section of the State only, but from every portion of the State; and if that be the policy of the State, though I deny that it should be, they are claims that can not be justly resisted. It will soon be precisely as it was before the adoption of the Constitution of 1846. Then the State undertook these enterprises itself. The Constitution of 1846 stopped that, but left this door open by which the State should give aid to enterprises, whether undertaken by individuals, associations or incorporations. When it is the policy of the State to give money for public improvements—aid to a canal here, or a railroad there—it generates claims for pecuniary aid from every

part of the State, similar in character to the multitude of canal projects pressed upon the Legislature in 1846, and many of which could not have been resisted but for the prohibitions of the Constitution then adopted. So, giving to the Susquehanna railroad, or the Champlain railroad, or to any road, will generate, before you are aware of it, a cluster of these claims from every portion of the State, which cannot be resisted. In my judgment it is proper that that door should be closed. No possible good can come of that class of legislation, but much evil. For these reasons I hope that the substitute offered by the gentleman from Orleans [Mr. Church] will be adopted. I am sure that the exercise of that power can never be beneficial to the State, but will always be attended with injustice and wrong, and the sooner it is stopped the better. The gentleman from Jefferson [Mr. Bickford] has referred to the government of the United States giving aid to the Pacific railroad. Now, there are cases of public improvements that have a broader reach than a pecuniary end. Improvements may be necessary for the safety or for the defense of the country, or for the benefit of the State at large. Of that character was the Erie canal when it was constructed. It was a great enterprise, calculated to develop the resources of the State, and its cost was beyond the capacity of private means. It was very proper, therefore, that the State should enter upon that. So with the Pacific railroad. It is a bond of union between the eastern and western slopes of our continent, beneficial to the government for the transportation of troops and munitions of war. It is the duty of the general government to provide for its own strength and for its own defense, and for the general welfare. But it is not the proper province of either the federal or the State governments to aid improvements which are peculiarly and solely designed to develop the resources of localities. That is not done by the general government, and has been rarely done by this State; but, unless we close the door, we shall soon be annoyed by a cluster of these claims.

MR. BICKFORD—Will the gentleman allow me to ask him another question, whether the appropriation to rivers and harbors did not confer exclusive benefits upon localities?

MR. OPDYKE—That was done in the interest of commerce—an interest placed under the special charge of the general government, and which it is in duty bound to protect and promote.

MR. BICKFORD—It was upon the principle of benefiting localities.

MR. OPDYKE—It was upon the principle of benefiting commerce, which is not local, but general, extending its ramifications to every part of our common country, and beyond it.

MR. WEED—I had not intended to make any remarks upon this question. In fact, after the disposition that I thought I saw in the Convention to bind up all these questions, and to take all power from the people, to prohibit the development of our undeveloped resources, I have not felt or taken any great interest in the question, believing that the people of the State of New York would never sanction by their votes such a Constitution as the majority propose to make. I

have been called to my feet, however, to-night, by the remarks of the gentleman from New York [Mr. Opdyke], and I propose to say a word or two in answer to some of the positions taken by that gentleman, as they may occur to me at the moment. I do not propose to enter into an extended argument at this time, at least upon this question. I have given it considerable thought. I have had considerable interest in it. I have had the pleasure of aiding, in a measure, one of the enterprises referred to by that gentleman and getting an appropriation from the State for that enterprise. However I may feel toward the ultimate result of our deliberations here, whether I believe it will be voted down or sustained by the people, I deem it my duty here to enter my protest against the principles advocated by the gentleman from New York. The gentleman asks what benefit it is to the rest of the State that the Albany and Susquehanna railroad was built. In many views it is a great benefit to the State of New York. I venture to say that the building of that road has developed a country that will pay back to the State of New York in fifty years, in its proportion of the taxes, in addition to what it would have paid had the road not been built, a sum equal to the sum the State has appropriated to it. And that is but one answer to the question. I will answer it in the Yankee style by asking another. What benefit was it to the county of Schoharie that the Erie railroad was built? What benefit was it to the county of Schoharie that the Erie canal was built, and that millions upon millions were spent upon it to enrich the country through which it passed, to enrich the city that the gentleman represents? They paid their proportion of the taxes to build that canal and to make those improvements from year to year, and when they come and ask at the hands of the State a sum to develop their resources, when it is actually beyond their power to develop them by private means, I say that that is a perfect answer and the proper answer and a conclusive one, "We have paid to you; we have enriched you; we ask you now, in the same view, to aid in developing our resources." That is exactly it. Is this not a State where each locality should be fostered and cared for alike, as near as may be; and I ask if this is not just and proper? And I may say here that, in all the accusations brought against the Legislature—and I have sat here days and days and heard them, because it has been the favorite occupation and amusement of gentlemen of this Convention to make such accusations, and therefore I have made no response to them, feeling that I was not called upon to make response—I simply say here that, with the unlimited power given them for twenty years, no man can get up in his place and say that that power has been abused. There have been but very few gifts, very few, indeed; and every one of those gifts can be sustained upon principle—every one wrenched from the Legislature by the justice of its claim and against the influence of the canal interest—that the objects for which they were given were worthy. I say, therefore, that the Constitution as it stands to-day in this regard is

good enough. There has been no abuse of it; and until abused it should not be changed; and upon principle I claim that it is right that the State should have the power to aid its isolated and undeveloped localities that cannot aid themselves. Another answer is, that the development of one portion of the State by great through railroads develops other portions of the State. It allows the products of different parts of the State to be distributed all over the State, and the Albany and Susquehanna railroad affects more than the counties it passes through. It affects all those parts of the State lying north of Albany. It affects the river counties. The gentleman has referred to the Lake Champlain appropriation. I tell that gentleman that that Lake Champlain appropriation comes within his own exception, where he says it was beyond the power of private capital. He says that localities benefited ought to know whether they are benefited, and ought to, if they can, build their own roads. Admitting this to be so, I tell him that the localities benefited, sometimes do not know it, and are blind, and cannot see it. I believe I can convince him and any other gentleman, by going into the particulars with reference to the Lake Champlain appropriation, that it is for the interest of the city of New York, immensely for the interest of the city of New York, that that road should be built. But I might go with my maps and profiles, and my figures, to the city to submit it to their board of trade for weeks and weeks, and urge it upon their capitalists, and I could not get a cent of a subscription. Why? They, in their wisdom, look away over the State of New York. This is too near them. They are building railroads in the Sandwich Islands and Kamtchatka, or somewhere else, and they could not see what was directly under their nose, what would bring a commerce of millions that way, which is now diverted from its natural channel to New England. But for the last twenty-five years this enterprise of a railroad from Albany north, has been urged upon the people of the city of New York, and no capitalist has put his money into it. The counties through which it runs cannot build it alone; they have not money enough to build it. They will do all they can, much more than their proportion, and we would help the poor millionaires of New York still more if we could. The interests of the whole State are benefited by the road. The State owns land in that neighborhood. The city of New York is interested. The river counties are interested. central New York is interested in it, for it cheapens to them iron and lumber, and they are all interested upon the question of taxation, and the people of those northern counties come here and say to the Legislature for two years: "We have paid for your canals, we have paid for your improvements, we believe this to be a benefit to the whole State; we cannot build the road without your help, but with a little aid will build it," and they have granted them the appropriation. I say if I had the time, and it was important upon this occasion, I believe I could convince every man within the sound of my voice that that appropriation was a proper one—that it was for the interest of the whole State of New York to

make it, and the struggle for twenty-five years to build the road, shows that it was beyond the power of private capital, and, therefore, within the very rule laid down by the gentleman from New York [Mr. Opdyke]. If \$5,000,000 is more than can be raised by private capital for a worthy purpose, it is just as much beyond the power of that locality as five hundred millions, or any other sum necessary to be raised to build the Pacific railroad, is beyond the power of private capital. These arguments show that there are cases where it is proper to exercise this power, and, therefore, it ought not to be prohibited. For these reasons, briefly stated, I am against the amendment of the gentleman from Orleans [Mr. Church], and hope it may be voted down.

Mr. M. I. TOWNSEND—It is true, as remarked by the gentleman from New York [Mr. Opdyke], that he has frequently had occasion to differ from me in regard to the views which we entertain as to the construction of the Constitution of the State; but so far as I am concerned I have felt a great deal more readiness to advance my opinions since I have been in the Convention from the fact that I was always sure that, if I had committed an error, the sagacity of my friend from New York would be sure to follow me and set me right, as I believe he has always done on all occasions whenever I have spoken. But, sir, I wish to call the gentleman himself to account for the position that he has taken here. He says that the donation of \$750,000 from the State of New York to the Susquehanna railroad has been of no benefit to the tax payers of the State, and has been a practical robbery; that it has not and does not return one cent to the treasury of the State; that it may increase the value of the land lying along the line of that road, and may increase the value of the property of the stockholders in that corporation, but that it does not return one cent to the treasury of the State. Now, I take issue with that gentleman directly upon that subject. If, sir, the building of that railway raises the value of property along the line of that railway that increase in value is found in the tax list, and that increase in value is also found in the amount of taxation returned to the treasury of the State; and the tax payers in the county of Rensselaer and the tax payers in the city of New York are aided in the payment of their taxes by having them diminished, just in proportion as the value of the land upon the tax list is increased along the line of that road. So that it is not true that a donation in that direction is mere robbery, and has not returned a dollar to the State. And I would call the attention of that eminent statesman from New York to another fact. The State contributes \$300,000, or \$500,000, or \$700,000 to aid in the construction of a railway, and that railway costs \$2,000,000. When that railway is constructed, as it might not have been but for the donation, that railway itself is assessed upon the tax list, not at one-third, not at one-half, but at the full cost of the road, its full value of \$2,000,000, which is added to the assessment rolls. That \$2,000,000 directly pays taxes to the State, and would not have paid a dollar to the State but for the donation of \$300,000, \$500,000, or \$700,000.

Mr. ALVORD—Will the gentleman allow me

to ask him a question? What is the capital and bonded debt of the New York Central railroad?

Mr. M. I. TOWNSEND—I said I would allow the gentleman to ask a question, but—

Mr. ALVORD—I wish merely to say that so far as regards my recollection there is not a single railroad in the State of New York which pays taxes upon one-third of its capital—not one.

Mr. M. I. TOWNSEND—I will say that, in the county of Rensselaer the railroads are taxed up to the full, and, I guess, more than their full value. I cannot say about other counties. But I wish to say, with regard to this same Susquehanna railroad that the gentleman has told us did not pay a dollar, that the road has paid us the last year, now yet scarcely more than half completed, a tax of \$14,556.46. It is a very limited view of the relation of the State to railroads and of railroads to the State, to start the hue and cry that they are robbing the State, when we have received the benefits that we have from them. The gentleman who has just taken his seat [Mr. Opdyke], has talked about the benefits the city of New York has reaped from the various lines of communication. Yes, sir, reaped it, and reaped it without her raising a hand for her benefit. Other localities have done something for themselves, and it is possible that individuals in the city of New York have done something for opening the lines of communication. But the New York feeling has been one of security in its position. It asks nothing of the world, for the world is bound to come to the city of New York. I am glad to see that the gentleman from New York feels as he does in relation to the injustice to tax payers. It is an immense improvement, I think, upon the speech he made this morning.

Mr. OPDYKE—Will the gentleman allow me to ask him a question? Will the gentleman state the remark I made upon which this is an improvement?

Mr. M. I. TOWNSEND—If the gentleman will give me an opportunity; it is the very thing I am coming to, and he may be well assured I shall not forget it. The gentleman from New York succeeded this morning in exempting some hundreds of millions of property in New York that has the benefit of all our expenditures, for police, for government, for care, entirely from taxation, and for what end? To aid in the prosperity of the city of New York. The capital in the city of New York that is owned by foreign capitalists he has told us, if he will permit me to travesty his statement a little, or at least to state it more at length: "If you impose these taxes, you will prevent my constituents putting into their pocket the money that they can make from having foreign capital here in the city of New York invested in goods that are now not taxed a dollar." And then the gentleman, by his argument, secures by this proposition hundreds of millions of dollars from taxation entirely, and goes upon a raid up into the hills of Schoharie—goes upon a raid of high-toned morality and regard for the interest of the people up into the mountains of Essex, and all through the State where the people are rightly desiring aid in proper improvements that are now adding to the prosperity of the country, and then, forsooth, he sets up for

virtue. Let the gentleman's virtue begin at home.

Mr. OPDYKE—The gentleman has professed to give a "travesty" of what I said. I ask him for the words.

Mr. M. I. TOWNSEND—Really the gentleman from New York does me too much honor to suppose that I remember from this morning the words that he uttered. He is doing too much honor to me.

Mr. OPDYKE—I deny utterly the correctness of his travesty.

Mr. M. I. TOWNSEND—The gentleman argued, and he succeeded in his argument, in favor of screening foreign-owned capital in the city of New York entirely from taxation; and it is only when he comes in contact with the farmers and the small mechanics in the hills and valleys of the interior of the State that the gentleman's notions of equity are set in full blaze. Now, sir, I thank God that the gentleman and I do differ in regard to these matters.

Mr. OPDYKE—The gentleman has given us a burst of his passionate eloquence on some remark which he declares I made this morning, but he has been careful not to refer, even indirectly, to the tenor of that remark. I deny the justness or the appropriateness of a single word he has uttered with regard to what I said this morning, or to the action I took this morning. If he had looked upon the subject of taxation in its broad, statesmanlike aspect, he would have voted with me and brought about equality of taxation. That, sir, was what I was arguing about, not to screen any property from taxation, but to bring it all out. I argued and voted in favor of an amendment to the Constitution to secure equality in the assessment of taxation and in the rate of taxation. To what the gentleman refers in his rhapsody as to what I said this morning, I cannot imagine. He talks like a man beside himself.

Mr. M. I. TOWNSEND—Will the gentleman allow me to ask him a question?

Mr. OPDYKE—No, sir.

Mr. M. I. TOWNSEND—You had better not.

Mr. OPDYKE—My reason is that I give like for like. When I receive discourtesy I am careful to return it. With regard to the question, however, that we are considering this evening, in my reference to the Susquehanna railroad, I am very glad to know that I have so far driven the gentleman from Rensselaer from his position that he falls back upon the increase of taxation that comes from improvements there as the only compensation the State receives for its gift. I suppose that in his expansive statesmanship he has overlooked some small facts. He has forgotten the fact that the capital invested in the railroad, if it had not been put there, would have been invested in something else, and that the State would have received taxation from it; and that the increase of taxation resulting from the construction of the road is only the increased value in the land, in as far as the assessors get that increase. That, I have no doubt, amounts to something. It may appear very large to the gentleman from Rensselaer, but to the city of New York, that pays nearly three-fifths of the taxes of the State, it

will take a long time to get back from the increased taxation in the neighborhood of the Susquehanna railroad that which has been bestowed upon that road. That, I understand, is the only compensation the gentleman now contends for; and he regards that as just. If that is his interpretation of justice, I have nothing more to say.

Mr. M. I. TOWNSEND—I ask permission to set myself right. I will ask the gentleman a question, with his permission; and whether with his permission or not, I will ask the gentleman from New York whether I am mistaken in supposing that he argued the other day in favor of the exemption of capital in the city of New York, that was owned abroad, from taxation in the State?

Mr. OPDYKE—No, sir. I made no such argument and no reference to the subject whatever.

Mr. HALE—I wish to say one word with reference to some remarks made by the gentleman from New York [Mr. Opdyke] upon this subject, when he was first up. The gentleman from New York stated that the only persons who were benefited by railroads were the stockholders and the persons owning property in the section of the country through which the road ran. As I understood him, he admitted that it was proper for those persons who were to be benefited in this manner to contribute in building the road. Is the gentleman aware that the State itself is the owner of property in different sections of the State; that the State is the owner of thousands of acres of land which ought to produce a revenue by sales and by taxation, but which are now entirely profitless and unproductive to the State?

Mr. OPDYKE—I would like to say, in answer to the remark of the gentleman from Essex [Mr. Hale] that I was not aware that the State is the owner of lands in the direction in which the Susquehanna railroad runs; and I had forgotten that she is in the other direction. But in so far as the State is the owner of lands, and in so far as the State will derive a benefit from the increased value of those lands, for any such improvement, there can be no doubt that that is a legitimate reason for expending the public money.

Mr. HALE—I thank the gentleman for his admission. His admission is an unanswerable argument against the amendment of the gentleman from Orleans [Mr. Church]. He states that where the State does own lands, it is legitimate and proper to contribute to internal improvements. The amendment of the gentleman from Orleans prohibits it in every case. It prohibits the State from aiding railroads which run through sections of the State where there are thousands of acres of land belonging to the State which are to be enhanced in value by their being built. That is the case with one railroad about which the gentleman spoke. I am not familiar with the facts as to the line of the Susquehanna railroad, but I know that the building of the Whitehall and Plattsburgh railroad will benefit property belonging to the State; and I have not the slightest doubt that there are thousands of acres of land belonging to the State, which will be thereby doubled and tripled in value. This amendment says to the Legislature, the representatives of the people of the State,

that they shall not give any thing to aid in developing and increasing the value of their own property in that section of the State. But if the gentleman believes in the truth of that concession, he is bound to vote against the amendment. Another thing—and I shall not occupy much time upon this subject, because it has been very fully discussed—as to the increase in the value of land owned by the State. There are thousands of acres of land in the county I represent here, which are owned by individuals, and upon which the taxes are unpaid for the reason that they are inaccessible. The result is that the taxes not being paid, these lands are advertised every few years for sale, and the State itself is obliged to become the purchaser. The revenues are cut off from this property which would be valuable if that portion of the State had the privileges which other sections enjoy. But there being no railroad accessible, the State is compelled to receive, in payment for its own taxes, this property, which is utterly valueless without these means of internal communication. The result is that while the taxes are unpaid, the State becomes the owner of worthless and unproductive lands, lands which are worthless and unproductive merely because they are inaccessible to the market. It strikes me that these are serious considerations, and that we ought to pause before we tie up the hands of the Legislature, and prohibit the people from aiding in developing their own property. I am not opposed to restrictions upon the power of the Legislature. But we should observe the distinction between restriction and prohibition. I would put safeguards about this thing. I would have no objection to an amendment somewhat like that offered by the gentleman from Orleans, if he would insert after the words "charitable institutions" the words "or works of public improvement." I would be willing to provide, as he does, that such gifts should not be made except under certain restrictions. I have forgotten the proportion of the Legislature which his measure requires; but there should, perhaps, be some restrictions, and something more than a bare majority of the Legislature required for such an improvement. Yet, I am not sure but it is just as safe to leave the whole matter to the Legislature. I do not think that, in this respect, the power of the Legislature has been abused; I would, however, have no objection to some restrictions; with such restrictions, I cannot see, from any argument that has been made here, why the exercise of the power of the Legislature to develop the resources of the State, so far as it affects the property of the State, is not wise and legitimate.

Mr. SPENCER—I understood the gentleman from New York [Mr. Opdyke], to admit that there might be cases in which it would be proper that the Legislature should have power to bestow pecuniary aid upon works of public improvement, instancing those cases where the public improvement should be of general or universal benefit, and excluding those cases where the benefit should be confined either to the immediate recipients of the benefaction or to the locality in which it should be situated. Now, sir, if there be a single case, or if such a case may be supposed, in which

a public improvement shall be shown to be of a character to benefit the entire State, then this amendment should not be adopted; and the Legislature should be left with power to bestow its aid on such an improvement. Such a case may be supposed, and not only may be supposed, but such a case has actually occurred. I have mentioned it once in this committee, and for the benefit of the gentleman from New York I will state it again, for it meets the case supposed by his admission exactly. The case is that of the railroad extending from the termination of the Chemung canal to the Pennsylvania State line and there connecting with another railroad to the coal mines of Pennsylvania. That railroad was constructed by the aid of the State, by the loan of its credit to the amount of \$70,000. I stated when this question was up in this committee before, and I state again, that that railroad, when this aid was bestowed upon it, had been partially constructed, and that the work upon it was entirely at a stand; that there were no means to carry it on, except by this aid from the State, and without that it could not at that time, if ever, have been constructed. Now, sir, this very year, there has been transported over that railroad, property which has contributed to the revenues of the canals of this State a sum greater in the aggregate than the entire amount of credit loaned by the State, and by this means the entire State has received the benefit of that loan of the State credit. The amount of this loan was \$70,000, and it has paid by its contribution to the canals of the State, independent of the other benefits which it has conferred upon the State, an amount sufficient to repay that sum more than ten times over, as can be ascertained by any person who will consult the statistics upon that subject; and is now paying every year, by its contribution to the canals of the State, more than the entire amount of the credit which was loaned.

Mr. MILLER—I do not wish to prolong this debate, but I wish to advance a thought or two that occurs to me which I have not heard presented in that part of this discussion to which I have listened, against the amendment offered by the gentleman from Orleans [Mr. Church]. I will say that in the discussion of this financial question I have been very happy in most cases to follow the lead of the distinguished gentleman from New York [Mr. Opdyke], and to vote with him. But I think—and this is the point to which I wish to call his attention—that the article which this Convention has already decided upon as a compromise should show to us that the amendment offered by the gentleman from Orleans, which is inconsistent with it, would be unjust in connection with the article which we have already agreed upon, or substantially agreed upon. We have agreed that the surplus revenues of our canals shall first be applied to the payment of the canal debt. Then we have agreed that they shall be applied, in the second place, to reimburse the State for the \$18,000,000 which have been advanced by taxation by the people of this State to the aid of the canals, and that that sum should be left in the control of the Legislature. The gentleman from New York [Mr. Opdyke] advocated this as a matter of justice to the people of

the whole State. The gentleman from Orleans [Mr. Church] claimed it as a matter of justice to the people of the whole State, because the people of the whole State and of every locality have been taxed to raise the \$18,000,000 that have been advanced to the canals, and so insisted that it should be returned to the treasury of the State. What should be done with it was left to the Legislature to say. Now, we suppose the Legislature, in its wisdom, will apply that money for the best interests of every section. Now, shall we bar the treasury against three-fourths of the State with regard to benefits they might derive from the eighteen millions, when that sum, in the original instance, was drawn by taxation from every section? I ask, can any man reconcile this with his idea of justice? It is well known that, on account of the topography of the country, we cannot have canals in certain sections of this State—in the largest portion of the State; and if we could, they are out of date. We shall build no more canals; and when you say you will not give aid to railroad enterprises, you substantially say three-fourths of this State shall have no benefit of the money which they themselves have raised by taxation. This is the point to which I wish to call attention. I am willing to go as far as the present Constitution goes in restrictions; but I am not willing to leave the treasury open to benefit one part of the State, while other portions that have contributed equally as much may share none of the benefits. I insist that the most economical way in which we have ever developed the resources of this State has been where we have given aid to railroads. They are not private corporations, or private interests, in one sense. Many of them do not pay; but they are public improvements, and are the cheapest way of developing the resources of the State. Mention has been made on this floor of the loan made to the Erie railroad. I would ask, how much that contributed to the wealth of the city of New York? Why, is there any comparison between the insignificant sum of three millions and the great flood of wealth which that road has poured upon that city alone? Then take the increased value of property all along the line of the road, the towns, villages and cities that are springing up there. I will venture to say the property created by the road has paid in taxes in a single year as much as the original donation. When we look at the Albany and Susquehanna railroad, which is not yet completed, and where we have not yet got the increased values, we can easily foresee in that section of the country, the same results we have witnessed along the line of the Erie and the Central roads. It seems to me there can be no dispute about the great benefits of these works as public improvements. But nine-tenths of the cost of these public benefits you obtain from private individuals, and private capital, while the State contributes not one-tenth, no, not one-twentieth, and for this reason, I say it is the cheapest and most economical way in which you can develop the resources of the State. The gentleman says if the work ought to be built, the people along the line will build it. I believe the gentlemen who favor this restriction, voted to prohibit the people along the line from bonding

themselves. Now, in the agricultural regions, where these roads are great public benefits, there are no accumulated fortunes, as there are in great cities, to be called upon. Many roads that will pay four-fold in advantages to the State in developing its resources, cannot command capital because there is not capital along the line. You cannot draw capital from abroad unless you can say that the stock will actually pay large dividends. This may not always be the case when the road is a great public advantage. New York is now behind many of her sister States in railroad enterprises. While we are the Empire State in many respects, we are the fourth in railroad enterprise. The commonwealth of Pennsylvania has a thousand miles more of railroad to-day in operation than the great State of New York. It is no time to check these enterprises; it is no time to say the State shall not encourage them. I heard a remark dropped by some gentleman (I have forgotten who it was) in relation to the taxes paid by railroads. I have not the figures here, for I did not know this discussion was coming up. But I have seen the figures within the last six months, and I remember in 1865 the railroads of the State paid more in taxes than the net earnings of our canals. The Central railroad has paid a million of dollars in a year to the State and the general government. It is, it seems to me, superfluous to discuss further the great benefits that these works confer, not only upon localities, but upon the State at large.

Mr. McDONALD—I do not rise to make an argument, but simply to state some facts that seem to have been forgotten in this discussion. With regard to the comparison that is made here as against the canals of the State I have tried to show, and if gentlemen will look at the figures they will find the statement cannot be contradicted, that the canals of this State pay six per cent income, and always have; and the committee has calculated they will always pay six per cent on all the money invested therein over and above local benefits to parties along the line; including the lateral or non-paying canals. So that, as regards the canals, there can be no claim that they have not returned to the State the money that was expended upon them. While, as regards the railroads, the State has already directly or been compelled by indirection to give \$11,000,000, and that is admitted to be an entire loss. Hence the people, or parts of the State represented in the railroads, cannot make any claim as against the people representing and living along the canals.

Mr. WEED—How does the gentleman get his figures?

Mr. McDONALD—You will find them in document 120, certified both by the Comptroller and the auditor. If you will refer to the few remarks—or a good many of them, as the case may be—you will find the figures and deductions therefrom made by me on the subject.

Mr. WEED—Does not the gentleman know that the interest was compounded upon these amounts for the last twenty years? Does he not also know that during the whole time those railroads have paid a large amount in taxes to the State, equal to more than the amount received from the canals?

Mr. McDONALD—With regard to the interest, it has been allowed according to the figures of the department. As regards the amount paid by railroads in taxes, we have had no figures. I know nothing about it. But I know this: that when a railroad pays large taxes it does not want aid. If a railroad is worth any thing after it is built and pays large taxes, like the Central railroad, there are plenty of men ready to build it.

Mr. WEED—Does not the gentleman know that every railroad corporation in this State, however insolvent it may be, pays taxes upon at least \$10,000 per mile?

Mr. McDONALD—I do not.

Mr. WEED—It is the fact, sir.

Mr. McDONALD—The Albany and Susquehanna road pays into the treasury in taxes about \$14,000; it received from the government \$750,000; the interest on that, as I understand it, is very near \$50,000, so that the people will lose \$750,000 and get back \$15,000. If that is a money-making operation I do not understand finance. The whole thing is intended—and these gentlemen admit it—that the State shall give this money, and they ask it as a gift. Does not the gentleman from Clinton [Mr. Weed] know that when he got through the Plattsburgh railroad he had to do it by the combination and understanding and votes of the same men who voted through the Susquehanna railroad? I mean by that, does he not know that the same votes substantially which passed the one bill passed the other?

Mr. WEED—I will state that that accusation has been made once before upon this floor by gentlemen from the same county that the gentleman now making the accusation is from—Ontario. I will state here that it is not true—not one single word of it. I will state further, that the gentleman who had charge of the Albany and Susquehanna bill was my strongest and most earnest opponent upon this floor. He advocated the one and opposed the other with all his might. I voted for both because I believed in the principle; but he voted against that bill, and spoke against it, and took the lead of those opposed to the Plattsburgh and Whitehall bills.

Mr. McDONALD—Does not the gentleman know that substantially the same votes that passed the one bill passed the other, and substantially that vote passed, also, the town and county assessment, or, rather, railroad bond bill?

Mr. WEED—I do not wish to take the time of the Committee, but if the gentleman asks me a question and wishes it answered, I am willing to answer the gentleman; but I do not understand what he means by the town bond bill, and for that reason I have nothing to say on that point.

Mr. McDONALD—You were in the last Legislature, which passed it.

Mr. WEED—I know I was in the last Legislature, and if the gentleman had been in the last Legislature he would not have referred to "the town-taxing bill" in general terms, as there were at least twenty-five passed. I do not know what one he means; they were passed by various votes; there were parties who opposed one and advocated another. There was none passed with this Whitehall and Plattsburgh bill or depending

upon its passage. I will state, in answer to the gentleman, that some of the votes that passed one bill passed the other. Every honest man (and I don't know that there were any in the Legislature, since the gentleman was not there) who believed in the principle of one, voted for the other. If a man in a particular locality favored it in that locality, he would vote for the one and not for the other; making the distinction upon the necessity of each case, not the principle. And that was the case, if my memory serves me right, in at least twenty-five of the town-bonding bills. From ten to twenty voted for the Whitehall and Plattsburgh bill who did not vote for the Albany and Susquehanna. It was a matter of notice that there were enough voting for one and against the other to make a majority; so that the statement made by the gentleman falls to the ground.

Mr. McDONALD—From what I have heard in this Convention, I am glad I was not in the last Legislature.

Mr. WEED—That Legislature would have reciprocated the sentiment. [Laughter.]

Mr. McDONALD—I simply know this—that both bills were passed at the same time, and both bills were vetoed at the same time. I think now it was in the Legislature before the last.

Mr. WEED—My bill was not vetoed.

Mr. McDONALD—The two bills were vetoed. But I did not know before that the gentleman owned the bill.

Mr. WEED—If the gentleman wishes to discuss the question as a serious question, he ought to do so. He has been talking about a bill passed by the last Legislature, known as the Plattsburgh and Whitehall bill; he ought, in fairness to this Convention, to treat it as a subject of earnestness, and not of levity. He referred to it as *my* bill. I used his language in reply. I said the bill I introduced was signed, not vetoed, and he, if he had known any thing on the subject, should have known it.

Mr. McDONALD—I understand the fact to be, they were both passed by a former Legislature, and vetoed, and then both passed by the last Legislature, and signed. What I wished to refer to, after having referred to the canals, is this, that until the State of New York saw fit to give the Susquehanna railroad five hundred thousand dollars in donation, no such donation was ever given to any railroad whatever, without, at the same time the government received a return. We have heard here of the Pacific railroad. Now, if the gentleman will refer to the act incorporating the Pacific railroad, he will find, first, that the whole amount advanced to the Pacific railroad is made a first mortgage lien upon the road; second, that for that advance the government has absolute control of the road in time of war, and has a right to the transportation of troops at such rates as they may see fit, or rather as may be agreed upon.

Mr. WEED—I would ask the gentleman if, in the time of our last war, the government did not have that same control over every road in the Union, and if it did not exercise it to the fullest extent?

Mr. McDONALD—I do not know that they

had the same control over every road; they had control over some roads. But I know that by contract the government has the exclusive control of the Pacific railroad, so that no man, whether he lives in this country or in England, can say that control is usurped. What I am saying in regard to this subject is this: that all such advances made to the Erie railroad, and to the Chemung road, and various roads up to the time of the Susquehanna road, were made with the expectation that they should be loans on sufficient security. The very act provides there shall be an absolute first loan given to the government upon all expenditure. So the calculation was that the government should simply advance its money and get a first mortgage loan. All that was ever asked, was that the State should loan its credit to the railroads in order to enable them to be built, the roads giving, in return, a first lien, until we come to the Susquehanna road; then, for the first time, we see an absolute advance. What I claim is this, that whatever we see with regard to the Pacific railroad, and other roads, there is no part of this State, except John Brown's tract, but what is able for itself, to build its own road. When I came here I was opposed to town bounty. But I have changed my mind; and with good limitations, that will make the bonds good. I will vote, if I get an opportunity, to allow towns to bond themselves for their own benefit. There is some sense in that. Those who get the benefit, pay the money. In that way every part of the State will be able to pay for its railroads, except John Brown's tract.

Mr. HALE—I would respectfully ask the gentleman if he knows where John Brown's tract is, and, also, whether he supposes it to be the tract of the same John Brown whose soul is popularly supposed to be marching on? [Laughter.]

Mr. McDONALD—With regard to John Brown's tract, I only know that it is located on the map somewhere nearer where the gentleman lives, than where I live. He probably knows where it is. I have no doubt he had some reference to it when he was speaking about land that was sold to pay taxes. And the State had to take its land for taxes. With the slight exception of John Brown's tract, there is no portion of this State but that can build its own road.

Mr. WEED—Does the gentleman know the fact that the "slight exception" he speaks of, is larger than the State of Massachusetts, and a perfect wilderness? I will suggest to him, for his information, that the "John Brown tract" to which he refers is not within one hundred miles of the edge of the wilderness where the Plattsburgh and Whitehall railroad comes. So that the "slight" tract there is a considerable piece of land.

Mr. McDONALD—I am not much acquainted—

Mr. WEED—I see you are not.

Mr. McDONALD—With the Plattsburgh railroad as the gentleman from Clinton But I know either that country is able to build a road or it is not able. If it is able to build a road it ought not to have any aid. If it is not able I do not think it is very important whether that land lies in John Brown's tract or elsewhere. The land is evidently worth but little. There is no claim

here that this road or any road shall be built to benefit the State through John Brown's tract expressly. What reason is there that we shall give this aid? Has any reason been given except that we have deprived them of their right to tax themselves? As regards that I am willing to grant it. If it be alleged, as another reason, that it improves property along the line of the road, I reply that those who get the improvement should pay for it.

Mr. E. BROOKS—Is an amendment in order at this time?

The CHAIRMAN—There are two amendments already pending.

Mr. E. BROOKS—I would like to move an amendment—to strike out “three-fourths” and insert “two-thirds.” It strikes me that three-fourths is altogether too large a number. In the first place, it compels ninety-six members out of one hundred and twenty-eight to vote in the affirmative on each such proposition, whether it relates to improvements or to the charities of the State. Now, a vote of two-thirds is in accordance with the Constitution of 1821, and is all that is required by the Constitution of 1848, and it seems to me that when eighty members of a body composed of one hundred and twenty-eight members, after proper discussion on an appropriation measure, decide to grant the money, it ought to be satisfactory. As the amendment I wish to offer is not in order, I ask the gentleman [Mr. Church], before a vote is taken, to allow me to offer it.

Mr. BICKFORD—I would like to make a suggestion to the gentleman from Richmond [Mr. E. Brooks]. It seems to me that the rule in the present Constitution is that three-fifths of the members shall be present—not that they shall vote.

Mr. CHURCH—So far as I am concerned individually, I do not regard the number of votes required to pass the bill as of very great importance. I do not think that a provision requiring either two-thirds or three-fourths of the members to vote upon a measure is any great protection to the treasury of the State. Under the Constitution of 1821 it required a two-thirds vote to pass a bank-bill, and I recollect very distinctly how entirely inadequate that provision was to prevent the passage of bank charters; and in the experience I have had in the Legislature, the two-thirds provision in the Constitution has been no security whatever against the appropriation of public money.

Mr. BICKFORD—Has not that very restriction requiring a two-thirds vote to pass a bank bill, and to pass certain other bills, been itself a source and occasion of corruption in the Legislature?

Mr. CHURCH—Very likely it has. It requires a little more corruption to get two-thirds to vote for a bill than it does to get a mere majority, and in the passage of bank bills, and others of that character, it has been charged that corruption was practiced to a great extent, but in the passage of bills in relation to charities I do not apprehend that there is any great danger of corruption, in the offensive sense of that term, and I am inclined to yield to the wishes of gentlemen and make the number two-thirds, if it is desirable to do so. Now, I have only one word to say in relation to the

principal part of this amendment. The question for this Convention is whether it is wise, after all the experience we have had in this State, and under all the circumstances which surround us, to confer this power, or rather to leave this power in the Legislature to appropriate the public money for the building of railways or any other private enterprise. Certainly I have no contest with localities. I sympathize with the localities represented by the gentlemen who have opposed this amendment. I would be gratified to see them prosper and succeed in carrying out their various projects of internal improvement; but I do believe—and believing so, I must so act—that this is an unsafe power to be vested in the Legislature of this State. Not that it might not be used, in some instances, beneficially and properly—beneficially to the locality directly interested, and properly enough with reference to the general affairs of the State—but it is a power liable to great abuse; it is a power which, if it commences to be exercised, will continue to be exercised indiscriminately; for, as my friend from New York [Mr. Opdyke] has well said, one application of this character engenders a dozen others, and so it will go on until the people of every locality in the State will come to believe that they are entitled to put their hands into the treasury of the State and take out money to carry forward their local projects. If this power were left in the Legislature they might, in a single year, impose upon the people of this State a tax of ten millions of dollars for these private enterprises, many of which would be utterly useless after the money was expended, and there would be no remedy on the part of the people; the tax-gatherer would come, and his demands must be complied with. Now, when the people are already groaning under their present taxation, when we are overwhelmed with debt, when we have corruption showing itself boldly in the Legislature, and when we see teams openly put together for the purpose of “log-rolling” through good or bad measures, as it may happen, I say it becomes this Convention to do what it can to put a stop to such proceedings by placing restrictions upon the power of the Legislature to appropriate the public money. Just look at the scene we have witnessed here to-night. My honorable friend from Clinton [Mr. Weed] is constrained to stand up and oppose this amendment because his locality wants a railroad.

Mr. WEED—Will the gentleman permit me to interrupt him? I beg the gentleman's pardon; I am in no such position as that in which he would place me. I am rather in the same position that he is in himself, for he lives upon the line of a canal, and has got his canal, and I live upon a line of railroad, and we have got our appropriation.

Mr. CHURCH—I understand that very well, but I say that the position of the gentleman from Clinton compels him to oppose this amendment; and I do not say that, if I were in the same position, I would not do the same thing; but he resides in a locality which compels him to oppose this amendment, whatever he may think of the principle. So does my friend from Delaware [Mr. Miller], and so do other gentlemen who have opposed this

amendment; they all live in localities which desire to take money from the treasury. Now, if this power be left with the Legislature unrestricted, how many more localities will come here and clamor for money to build railroads, or to do something else of that kind? There will be no end to these demands, and of course one locality has as much right to make them as another; so that the only safety is to put a restriction upon the power of the Legislature so that they cannot vote away this money.

Mr. MILLER—I would like to have the gentleman name some instance in which this power has been abused?

Mr. CHURCH—I said a few minutes ago that I intended to enter into no contest with reference to the particular cases in which this power has already been exercised by the Legislature, and that I sympathized with the localities which have made demands of this character; but that is not the question. I say, in the first place, as a matter of principle, that it is no part of the business of the State to take money from its general treasury and give it to private corporations, or in aid of private enterprises.

Mr. MILLER—I have no desire to embarrass the gentleman, but I wish to ask him a question which he may not desire to answer.

Mr. CHURCH—Yes, I desire to answer.

Mr. MILLER—My question is, whether this power has been abused—whether aid has been granted in any case which has not proved to be a good investment for the State?

Mr. CHURCH—Now, the gentleman can easily recall the various instances in which the credit of the State was loaned to railroads under the old Constitution, before the restrictions of the present Constitution were in force.

Mr. MILLER—For myself, I only ask that the Constitution be left precisely as it is, and that you do not restrict the Legislature from granting aid where they see fit. The levying of the tax will itself be a restriction.

Mr. CHURCH—I know; but we all know that in various cases where the State loaned its money to these corporations the money was lost and the State had to pay—the railroads were useless entirely. Now, I would like to know what difference there is between the State loaning its credit to aid a railroad, and appropriating the public money to aid it. If the one is wrong, the other is wrong.

Mr. MILLER—In my judgment, there is a very great difference; and without wishing to take up the gentleman's time, I will say that the Constitution may very properly restrict the loaning of the credit of the State, because, as we all know, credit is a very easy thing to give; but when the tax is to be levied that very year, it checks imprudent action of that kind.

Mr. CHURCH—It may be true that it is more easy to pass a bill to loan the credit of the State than to pass a bill to loan money and taxing the people to raise it at once; but in point of principle there is no difference. If it is right to loan credit, it is right to loan money.

Mr. MILLER—It seems to me that the difference is this: if you allow the State to loan its credit there will be danger that the credit will be loaned for unworthy objects; but if you allow

it only to give aid by appropriating money which must be raised immediately by taxation, there is no danger but that it will be given to good and worthy and safe objects.

Mr. CHURCH—To that I answer, that there is danger in either case. There may not be danger to the same degree in the case which the gentleman puts, but there is danger; and if we establish the principle here, by omitting to make this restriction, that every locality may come to the Legislature and demand a portion of the public money for its own purposes, I tell you that this power will be abused, and money will be appropriated for unworthy objects. I do not say that appropriations have been made for such objects. The objects for which appropriations have been made, are probably as worthy as such objects can be such as the Susquehanna railroad, or the railroad represented by my friend from Clinton [Mr. Weed]; but I say, in the first place, that there is no principle by which such appropriations can be sustained; and in the next place, that if you allow this precedent to be established there will be no end to demands of this character, and you will find this power grossly abused, and that, too, at a time when the people are least able to bear additional burdens. If a railroad is desirable and ought to be built, private capital ought to be found to build it. It is a poor answer for gentlemen to say that private capital will not be furnished to build these roads—nay, it is the best argument against the benefits or desirableness of a railroad that no man will come forward, especially in such times as we have had in the money market in the last few years, and invest his money in the enterprise. Now, that a railroad running into every county and into every neighborhood in the State might be of some incidental benefit is perhaps true, but the proposition that you may tax the people of the whole State in order to secure such incidental benefits to the people of those localities is a proposition so unjust, one which will operate so unequally upon the people, and which is so foreign to the legitimate purposes of a State government, that I cannot for a moment tolerate the idea.

Mr. MILLER—Will the gentleman allow me to ask if taxation for these purposes operates any more unequally upon the people than taxation for any other public improvement.

Mr. CHURCH—I take it, sir, that taxation for public improvements that are made and owned by the State rest upon an entirely different principle from taxation to raise money to be appropriated to aid a private enterprise. The gentleman from New York [Mr. Opdyke] has well said that money appropriated from the treasury to a railroad corporation goes directly into the pockets of the shareholders; that is the effect of it, and as the gentleman from Ontario [Mr. McDonald] has said, they might as well aid you or me or any other individual in erecting large and expensive buildings, or making other improvements for our own purposes, as to give money to a railroad. In one sense it is a different kind of enterprise, but it is a private enterprise entered into for profit, and whatever money is appropriated by the Legislature to aid it, goes directly into the pockets of the corporation.

Mr. WEED—I do not know that I have a right to say any thing in reply, having already occupied the floor once, but I wish to answer very briefly the position taken by the gentleman from Orleans [Mr. Church], that this is giving money to private enterprises. It is not giving money to private enterprises. It is giving money for public uses, and every bill of this character that has passed either branch of the Legislature has passed only because it gave money for public purposes, for the public good, or otherwise.

Mr. CHURCH—Does the gentleman mean to say, as a legal proposition, that the appropriation of money to a railroad corporation is not the appropriation of money for a private purpose?

Mr. WEED—I say nothing with reference to it myself, but I will tell the gentleman what has been for the last fifteen years the decision of the law officers of the State of New York upon that point, a decision sustained by every Legislature that has passed such a bill, namely, that such a grant was for public purposes, and therefore required only a majority of the members of each house to make it, and during all these years, a majority of the Legislature have passed bills making such grants, although prohibited by the Constitution from making donations of money for private purposes by a mere majority vote.

Mr. CHURCH—Will the gentleman give the names of the State officers who took that ground?

Mr. WEED—The first officer who gave that opinion, twelve years ago, was Lyman Tremain, as Attorney-General. The next power that sustained it was the court of appeals, in a case arising on an appeal from the Susquehanna railroad, and that has been the settled basis upon which all such bills have been passed ever since—the principle that the appropriations were for public purposes, and, therefore, required only a majority vote of the Legislature to make them.

Mr. HALE—If the gentleman will give way, I would suggest that the provision in the general railroad act for compulsorily taking real estate for building railroads, on giving compensation to the owners, has been sustained by the courts under the provision of the Constitution allowing property to be taken for public use, on making compensation, on the ground that land taken for such purposes was for public use.

Mr. CHURCH—Certainly; but that rests upon an entirely different principle. The courts have decided that taking real estate for such a purpose is taking it for public use, because every citizen in the community has a right, upon equal terms, to use that real estate; but an appropriation of money directly to a corporation, is a different thing entirely.

Mr. WEED—I would like to know why it is a different thing. It is an appropriation to a corporation for a specific purpose, to build a railroad, and it can only be given, in the instances referred to by the gentleman, when the railroad is completed; and then the statute of the State is that the road is public property, and that the gentleman from Orleans, and every other member of the body politic, may ride upon it at a certain specific fare, whether the company can afford to carry them at that rate or not.

Mr. CHURCH—I ask whether it makes any difference in the right of a citizen to ride on a railroad, whether the State has given that corporation money or not?

Mr. WEED—No; but it shows that it is for a public use. If the State of New York takes the control of the property from the corporation, then it becomes *quasi*, public, under the control of the Legislature, and they exercise control over it; and for that reason the Attorney-General—very properly, it seems to me—decided that it was for a public use; and that decision has been acquiesced in for the last twelve years. The only argument that the gentleman makes is that it is appropriating money for a private use, and upon that point he has the decision of the chief law officer of the State, which has been acquiesced in for the last twelve years against him. The gentleman from Ontario [Mr. McDonald] cited the case of building a block of buildings, and I was surprised to see the gentleman from Orleans [Mr. Church] accept it as a proper example. It seems to me that there can be no similarity between the two cases. The one is a mere private enterprise; the other is a public enterprise for the public good.

Mr. McDONALD—Will the gentleman allow me to explain? I cited that simply in reply to the argument that this ought to be granted because it increased taxation; that the railroad gave nine-tenths, the State one-tenth, and the tenths were taxed; and it was in reply to that argument that I cited that example.

Mr. WEED—The argument of the gentleman was based upon the whole—upon the idea that the grants in both cases were for private purposes. Now, one is public, and from its nature must be public; and it seems to me there should be no restriction upon it. The gentleman from Orleans [Mr. Church] says he does not blame me for advocating the principle, because I live in a locality which requires State aid to develop its resources. Well, I do not blame the gentleman for advocating the reverse of it; but I say that if I advocated this principle simply because my locality demanded at the hands of the State money to aid in its development, while I believe that principle to be a bad one, I should be wrong in that advocacy. But if there is any principle that I have argued before the Legislature, and that I believe I can argue here with a conscientious feeling that I do it from proper motives, it is that the State at large should see that the State is developed; that we, as a State, should see that we do not go back while the other States are going forward, and that the great wealth which lies still undeveloped in the north and in the south, in the east and in the west, in this State, shall be as fast as possible brought to light; and it has been my pride and hope that I would see the time when a New England capitalist could not own twenty thousand acres of land in the State of New York and keep it for a fishing-park. I may never see that time, because the policy of the gentleman from Orleans [Mr. Church], and those who act with him, may prevail, but if we go on and carry out the policy I advocate, we will yet see that "little" John Brown's tract, spoken of

by the gentleman from Ontario [Mr. McDonald] developed into a rich and blooming portion of our State—a portion, too, which is itself as great in extent as are some of the States of this Union. But if, on the other hand, we adopt the views expressed by some of the gentlemen in this Convention, if we prohibit the State from aiding in the development of its own resources, if we prohibit localities from taxing themselves to build railroads and to make other public improvements, if we adopt this system of curtailing and cramping the enterprise of the country, we shall always see, as we see now, these vast tracts of wilderness kept wild and unproductive, as a farmer keeps his wood lot. To-day the county which is naturally the richest in this State, the richest county in the Union, the county of Essex, is assessed but four millions of dollars; but let the proper policy be adopted for its development its assessment will be forty millions in less than twenty years. You cannot get New York capitalists to go into it now because it is too near home, and unless the State does something to open it up, it will always remain on your assessment roll at its present low assessment. I believe, however that the \$250,000 appropriated last year, will do much to develop that portion of the State, and in addition to increasing the value of the State land by a million of dollars, will bring in twice that sum in taxes alone, within the next twenty years. Now, I say that the gentlemen from Orleans and Ontario are mistaken; they do not see off their own lots; but I, from the localities in which I have lived, have been compelled to take a wider view, because I have seen the disadvantages of living in an isolated part of the country. I have been forced to these views from living in this region, and being compelled to see the necessity and propriety of State aid in developing the resources of the State; and this is why I advocate this principle. I live in a valley, the trade of which naturally belongs to the city of New York—a valley which two hundred years ago was the great through route from the Canadas to New York city; and I have been forced to look on and see New England capital come in and divert nearly every dollar of that trade to New England cities. The gentleman from Richmond [Mr. Curtis] said that trade would follow its natural channels, and that no act of man could divert traffic and travel from their natural highways. He did not know what I know with reference to, northern New York, or he would never have made that statement. He did not know that fifty or even thirty years ago no man supposed that the trade which naturally belonged to the great highway between the Canadas and New York would ever find its way over the Green Mountains, and yet to-day we see that trade almost entirely diverted to the New England cities. The New England States did not hold the gentleman's theory; they had no such qualms of conscience about interfering with the natural channels of trade; they believed that it was the duty of the State to give aid to the development of every part of its own resources; and the result to-day is that that commerce travels over the tops of the mountains, and has already doubled the size of the city of Bos-

ton. Nearly the whole commerce of that portion of the Canadas finds its way to tide-water by the ports of Boston and Portland, when its natural port and its nearest port is to New York. Why is it? Simply because they have made a good use of their money, while the people of New York have refused to invest \$250,000, for instance, because they thought it was not a proper way to expend money; and they have thus lost that trade, and with it these 200,000 or 300,000 inhabitants and their wealth. I say it is a short-sighted policy. This is a question of great importance to the whole State, and every great road, like the Albany and Susquehanna railroad, and the roads connecting and going north, is a great improvement to the whole State, and benefits the whole State, and for that reason I say it was properly a public enterprise, and should be fostered by the people of the State. I therefore hope this amendment may be voted down.

Mr. FERRY—In looking at the question whether the State should make appropriations of this character, and whether the policy would be an extravagant one if adopted, we should bear in mind that these appropriations are more frequently sought for aid to railroads, which are regarded in the light of public highways. Our judges and the courts have regarded them in this light, in sustaining and upholding the validity of such appropriations, and it ought not to appear to us as strange or extravagant if any member of this body coming from a portion of the State whose territory is still undeveloped, should imagine and claim that the prosperity of the whole State would be materially promoted by the opening up of highways into that undeveloped region even if done at the expense of the people at large. It is true that these public highways are ordinarily constructed by towns, and not by private corporations. But towns are held to be *quasi*-corporations; so that, so far as this question is concerned, there is no material difference in the character of the aid which may be asked for in favor of one project or the other. A railroad, however, is a public thoroughfare far exceeding in usefulness that of ordinary highways to the localities through which they run and to the State at large, the cities especially, by reason of the wealth poured into their coffers. Some criticism might, perhaps, be indulged on the remarks of the gentleman from Orleans [Mr. Church], but I am pleased to say that I have generally followed the lead of that gentleman in his views of finance. I am very much inclined to be a strict constructionist on all these matters, and I am not willing to depart from such a rule, except I have very good reason for believing that public good will result from it. The gentleman admitted that, with regard to projects like the Albany and Susquehanna railroad, and others of a similar character, they have not only resulted in benefit to the locality through which they run, but perhaps they have produced incidental advantage to the State at large; but he said, and said very properly, that the danger of any increase of this policy, and of allowing it a place in our Constitution, is that it is liable to abuses. There he is right; it is liable to abuse. I, for one, would be willing to say that the credit of the State shall not in any case be loaned.

I do not say that the principle of loaning the credit of the State to a corporation differs materially from a gift, but it comes back to the same danger, the liability to abuse; though it is never liable in that degree in the one case as in the other. That is the main difference between the two. I honestly believe, if you carry into this Constitution the provision that you will require a two-thirds vote for the gift of any money, to be followed by taxation, you will rarely, if ever, get any such appropriation passed. I think, on examination, you will find that no such appropriation has been passed. It is indeed exceedingly difficult to get a majority to pass a bill of that character. If you ask the State to give money to any corporation, you find many in the State who are, perhaps, disposed to take too narrow a view of these things, and it will be very carefully looked at and criticised, and there will be great difficulty in getting an appropriation by a majority vote; but if you require a two-thirds vote, you will have not only to make a plausible case, but a very clear case. With regard to log-rolling, I know how dangerous it is and what influence it has, and I know how difficult it is to stop it. If we could devise any prohibition which would prevent it, without limiting the freedom of the State, I would be ready to go for it; but we must be careful not to go too far in matters of this kind. I know, from my past experience, if you require a two-thirds vote, you may cast away all your fears that there will be any abuse in getting appropriations of this kind. I might ask gentlemen, if they have ever known an instance, when any thing like a two-thirds vote could be obtained for any measure whatever, which would not command, of itself, the general and favorable consideration of the people of the State. I know that men, interested in getting favors from the State for enterprises of this kind, generally look upon the requirement of a two-thirds vote as almost a denial of any such favor for any project which they may have in view. That in the view those men take of it, and if this Convention should establish any such rule, gentlemen may dismiss all their fears that there will be any abuses under it.

Mr. KETCHAM—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Ketcham, and it was declared lost.

Mr. BLOKFORD—I wish to inquire whether the gentleman from Orleans [Mr. Church] accepted the suggestion of the gentleman from Richmond [Mr. Brooks] to substitute two-thirds for three-fourths.

Mr. CHURCH—Yes, sir; I did.

Mr. GRANT—I would like to say a few words on this subject. It has been expressly decided by the supreme court of this State, by the supreme court of Pennsylvania, by the court of appeals of New York, and affirmed by the supreme court of the United States, that an appropriation for the purpose of building a railroad is an appropriation for a public and not a private enterprise.

Mr. CHURCH—Will the gentleman tell me where that decision is?

Mr. GRANT—It was decided in the court of appeals in the case of the Town of Guilford v. Supervisors of Chenango county, 3 Kern., 149. It was also decided in the supreme court of Pennsylvania in the case of Sharpless v. The Mayor of Philadelphia, 21 Penn. R. 149. In this last case the court, in giving its opinion, says:

"Railroads are not private affairs. They are public improvements, and it is the right and duty of the State to advance the commerce, and promote the welfare of the people, by making or causing them to be made at the public expense.

"If the State declines to make a desirable public improvement, she may permit it to be done by a company, and the fact that it is done by a corporation does not take away its character as a public work.

"The right of the company, by which it is made, to be compensated for the expense of constructing it by taking tolls for its use, though it gives the corporation an interest in it, does not extinguish the interest of the public, nor make the work a private one; because, to say nothing of other advantages, the public can pay the toll and still carry and travel on it very much cheaper than without it.

"The State may, therefore, rightfully aid in the execution of such public works by delegating to the corporation the right of eminent domain, as she always does, or by an exertion of the taking power, as she has done very often."

The gentleman, I have no doubt, will also recollect the case of the city of Auburn, decided by the court of appeals of the State of New York. In that case it was held that the loan of the credit of the city of Auburn to a railroad company should be sustained upon the express ground that it was an appropriation of property for a public use. And it will also be recollected that the [supreme court of the United States affirmed that decision, holding that the loan was legal upon the express ground that it was an appropriation for the public good, and not for any matter of private enterprise. Sir, if an appropriation of money—to the Erie railroad, for instance—cheapens the poor man's barrel of flour by half a dollar, if it cheapens the loaf of bread to feed his family, is not that appropriation a matter of public concern and of public good? Can it be doubted but that the railroad in the city of New York which carries the poor sewing-girl five miles for five pennies, is also a matter of public concern and a matter of public good? If so, then upon every principle an appropriation to build a railroad is a matter of public concern and public good, and not a matter of private enterprise. Now, sir, who is it that are so clamorous for this change in our Constitution? Has any petition come up to the Convention from any citizen, or any portion of the citizens of the State, praying for their change? No, sir. On the other hand, do we not recollect, as a part of the traditional history of our country, that when Clinton summoned to his aid the people's representatives from the northern, southern and the still sequestered portions of this State to make vast appropriations that were to be accumulated only by taxation upon every portion of this State, to raise the funds to build the Erie canal, that he promised,

and the friends of the Erie canal promised, that that money, thus raised by taxation, should, whenever opportunity presented itself, be returned to those portions of the State, by giving State aid to objects of public improvement in all sections of the State. Certainly gentlemen will recollect that those promises were made and have been frequently renewed and reaffirmed. Those portions of the State not immediately interested in the canals contributed by taxation their money in good faith, in the common effort for the construction of these great enterprises, benefitting in the main only sections of the State depending upon the pledged honor of all sections to aid each other; and are they now to be cut off from any aid or assistance when they, after waiting long years, shall desire to build a railroad? Sir, I hope not. We have already, as a matter of compromise, as has been stated by the gentleman from Delaware [Mr. Miller], agreed here that the \$18,000,000, which was advanced to the canals, in part by sections of the State not benefited by the canals, should remain subject to the disposition of the Legislature of the State. Shall we violate that implied agreement, that compromise, before we leave our place in this Convention? Shall we say to those sequestered portions of the State, you are never to have any benefit from this money? Sir, I hope not! Again, sir, I am opposed to this doctrine of requiring two-thirds of the members of the Legislature to appropriate any money of the State for public improvements. It is democratic to pass every law by a majority, and if a greater number than a majority is to be required because there is to be log-rolling, then in every other case two-thirds or three-fourths should be required to pass any statute law, in this fear that there is to be log-rolling, or that improper influences may be brought to bear upon the Legislature. I think I can see in this Convention a manifest disposition to distrust the Legislature in the future. We should recollect that legislators are the creatures and agents of the people. We are to recollect, too, that an honest people, with a full appreciation of the magnitude of the great and varied interests, that are and must of necessity be intrusted to the law-making power of so great a commonwealth, will elect an honest Legislature, worthy of the great trusts to be confided to their care, and who will, I trust, ever be cautious, just and wise in the distribution of the bounties of this rich and powerful State in her beneficent policy of internal improvements by which she has already won the proud position of Empire State.

Mr. EDDY—I wish to inquire whether this amendment now pending will not allow of a loan of the credit of the State by a two-thirds vote?

Mr. CHURCH—No, sir; that only applies to money or property.

Mr. WEED—I understand this prohibits the loaning of the money or credit of the State for any purpose except for charitable purposes.

Mr. CHURCH—Yes, sir.

Mr. WEED—And that by a two-thirds vote?

Mr. CHURCH—Yes, sir; that is the amendment. The question was then put on the amendment, and it was declared lost, on a division, by a vote of 36 to 39.

Mr. ALVORD—I now propose to amend the section by striking out after the word "corporation," in the third line, and inserting the following:

"No money or property of the State shall hereafter be given, or loaned to, or in aid of, any individual, association or corporation, unless such gift or loan be specifically granted or loaned by an act, upon the final passage of which the question shall be taken by yeas and nays, and which shall be entered upon the Journal, and two-thirds of all the members elected to each house shall vote affirmatively thereon."

I desire to say but very little in addition to what I have already said in reference to this rule, which obtained in this State for many years under the present Constitution, that no gift or loan could be made except by a two-thirds vote. It was held by the then law officers of the State, that this was the true construction of the Constitution until the celebrated decision of the Attorney-General in 1857. All of the Attorney-Generals previous to that, who gave opinions, and quite a number of them, gave decisions favoring the idea that any loan or gift to a railroad corporation, was a loan or gift which required a two-thirds vote of the two houses. Up to that time gentlemen will find that every loan or gift made by the State under any circumstances, was made under that idea. After that decision, they did pass loans or gifts to railroads by a vote of sixty-five in the House and of seventeen in the Senate, upon the ground that it was a public improvement. There has been a difference of opinion in reference to that matter, upon the part of the legal profession in this State. It is a matter which, in my opinion, should be settled here affirmatively, as the only safety we have. Again, in reference to the point which has been made here, to turn the attention of members of the Convention to any time or period, or any particular appropriation which has been made which has not been beneficial to the State, I will call the attention of gentlemen to the fact that there have been hundreds of thousands of dollars given for the purpose of making improvements in wild and uncultivated lands, for the purpose of getting out timber, and all that sort of thing, and the result has been that the improvements have been commenced, and the timber stolen from the land and the improvements suffered to go down. There have been repeated instances of that kind in this State, and hundreds of thousands of dollars have been given, and the State has lost the property and the improvements, and the appropriation was made in each case under the specious pretext that it might possibly reach some of the public lands of the State, and the State, therefore, be benefited; and upon that pretext these appropriations have been obtained by a simple majority vote, whereas, in most every instance, they would have failed if they had required a two-thirds vote, and the State would have had the advantage of having the property intact as well as the money of the appropriation in the treasury.

Mr. E. A. BROWN—I would like to inquire where these State lands are which have been robbed in this manner. I had supposed that years ago

pretty much all the lands of the State had been sold to a certain railroad corporation, and there was not much left.

Mr. ALVORD—The time I speak of is before they were sold to the railroad corporation, years before. The gentleman lives on the edge of a good many of the lands which were in that way denuded of their wood at the expense of the State, and the State got neither the wood nor the money.

Mr. E. A. BROWN—I would like to have the gentleman state any instance of one single dollar that the State has ever appropriated for the sake of getting out timber or any thing else from lands now owned by the State. I know of no such instance on our side of John Brown's tract.

Mr. BICKFORD—I wish to say one word with regard to this amendment, that is, that it does not vary very materially from that which we have just voted down. I wish, too, to say one word with regard to this allegation, that the power of the Legislature to give the property of the State, or to tax the people for railroad enterprises, is liable to abuse. We grant to the Governor, for instance, the veto power. That it is liable to abuse is certain. We grant to the Governor the power of pardon for crimes and offenses, after conviction. That it is a power which is liable to abuse, is certain, and there is no power we can grant which is not liable to abuse. Indeed, sir, man is a being pre-eminently that perverts, and he perverts every thing. He makes the blessings which God shows upon him, curses. It is no argument against any thing whatever that it is liable to abuse. The Christian religion itself is liable to abuse. Men will be hypocrites, and under the guise of sanctity, will commit the vilest crimes and the greatest enormities. Is that any reason or argument against religion? Not at all. Neither is it any argument against giving power to the Legislature, that they may abuse it. The people if they wish the power not to be abused, should elect the proper men to the Legislature; and it is their own fault if they are cheated, if you give them a proper Constitution. With regard to the public benefit of these railroads, you cannot build a railroad anywhere in the State, but I am personally interested in it. For instance, the State has aided a railroad in Schoharie county; my constituents, living in the village where I do, are interested in it personally, and accommodated by that road, in the county of Jefferson. They have relatives there whom they wish to visit, and it is an accommodation to them. And so it is to the people of New York city, and to every locality in this State. It is a benefit to every man in the State, whenever any railroad anywhere is built. There can be no doubt, therefore, that it is a public benefit, and it is not to be classed merely as a private enterprise.

Mr. E. BROOKS—I move that the committee do now rise. We have been here long enough to-day, and indeed too long.

The question was put on the motion of Mr. E. Brooks, and it was declared lost, on a division, by a vote of 27 to 48.

The question recurred upon the amendment to the eighth section moved by Mr. Alvord.

Mr. HALE—It seems to me that this section

as drawn must amount to a practical prohibition as much as the other. It is known that it is very seldom that much more than two-thirds of the Assembly can convene at any one time. We have seen here the difficulty of obtaining even a quorum of this Convention, which is not a great deal larger than the Assembly in number. If, instead of two-thirds of the members elected to each branch of the Legislature, it should be two-thirds of the members present and voting, it would be all that is necessary practically to put safeguards in the Constitution upon this subject, and would not amount to an absolute prohibition.

Mr. FERRY—I should like to inquire of the gentleman from Onondaga what is intended by this amendment? Does it not allow the loaning of the credit of the State if a two-thirds vote is given for it?

Mr. ALVORD—It does not, because my proposition is to amend the eighth section after the word "corporation," in the third line. The first part of it is in these words:

"The credit of the State shall not in any manner be given or loaned to, or in aid of, any individual, association or corporation."

Then there is a full stop, and this is the commencement of another sentence.

Mr. FERRY—you introduce the loaning of money or of the property of the State?

Mr. ALVORD—The loaning of the money or property of the State is a different thing from the loaning of the credit of the State.

The question was put upon the amendment moved by Mr. Alvord to the eighth section, and it was declared carried.

Mr. KETCHAM moved that the committee rise and report progress.

The question was put on the motion, and it was declared carried.

The committee accordingly rose, and the PRESIDENT resumed the chair in Convention.

Mr. SMITH, of Fulton, reported that the Committee of the Whole had had under consideration the reports of the Committee on the Finances of the State and the Committee on Canals, and had made some progress therein, but not having had time to go through with the same, had instructed their Chairman to report that fact to the Convention and ask leave to sit again.

Mr. ALVORD moved that the committee be discharged from the further consideration of this article and that it be referred to the Convention.

The question being put on the motion, it was declared carried.

On motion of Mr. DWIGHT, the Convention adjourned.

THURSDAY, November 14, 1867.

The Convention met at 9 o'clock A. M.

Prayer was offered by Rev. A. A. FARR.

The Journal of yesterday was read and approved.

Mr. GOULD asked leave of absence for Mr. Fuller, of Monroe, until Wednesday next.

There being no objection, leave was granted.

Also for Mr. Allen, of Washington, after twelve o'clock to-day, until Wednesday next.

There being no objection, leave was granted.

Also for Mr. Silvester, for Friday and Saturday. There being no objection, leave was granted.

Mr. WEED asked leave of absence for Mr. Moore for this week and next, in consequence of professional engagements.

There being no objection, leave was granted.

Mr. J. BROOKS—I do not know, from my peculiar notions, whether I ought to ask leave of absence at all. Perhaps I ought to go without. But with due deference to the Convention, being obliged to leave early next week for Washington, I therefore ask leave of absence on and after to-morrow.

There being no objection, leave was granted.

Mr. A. H. LAWRENCE presented the remonstrance of trustees and instructors of Dundee academy, in Yates county, against abolishing the Board of Regents.

Which was referred to the Committee of the Whole having that special matter in charge.

Mr. A. F. ALLEN presented the memorial of E. Mitchell, of Stockton, and 17 others, upon the same subject.

Which was referred to the same committee.

Mr. E. BROOKS offered the following resolution:

Resolved, That provision should be made by law that all work of the estimated cost of five thousand dollars, or more, to be executed for the State, or for any city, town, or county, shall be advertised for at least thirty days, and awarded to the lowest bidder, if the same is deemed reasonable. No informal bid lower than those in legal form shall be rejected until the party or parties making the same have had notice of privilege to correct, and no alteration of the plan or specification shall be made before or after the execution of the contract.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. GRAVES offered the following resolution:

Resolved, That a copy of the proceedings of this Convention be sent to the State Convention to be held in the State of Virginia, as a delegate of that Convention has requested the same.

Which was referred to the Standing Committee on Contingent Expenses.

The Convention resolved itself into a Committee of the Whole on so much of the report of the Committee on Canals as relates to their care and management, Mr. WEED, of Clinton, in the chair.

The CHAIRMAN called upon the Secretary to read the report.

The SECRETARY proceeded with the reading of the first section.

Mr. SMITH—I move that the further reading of the report be dispensed with. It has probably been read by every member.

Mr. E. BROOKS—Is that motion in order?

The CHAIRMAN—The Chair thinks the motion is in order. The rule is that the report be read unless otherwise ordered; and if the Convention so order, they may dispense with the reading.

Mr. COOKE—I hope the reading will not be dispensed with. The committee have submitted a system for the management of the canals, and it is very desirable for a proper understanding of that system that it should all be read.

Mr. SMITH—I withdraw my motion if any gentleman wishes it read.

Mr. VERPLANCK—A large portion of that report has already been considered in committee.

The CHAIRMAN—The Chair has instructed the Secretary to read only such portions as are before this committee. If any portions have been considered by the former committees, they are not before this committee.

The SECRETARY then read the first section for consideration, as follows:

SEC. 1. The Comptroller, Treasurer and Attorney-General shall be the commissioners of the canal fund. Said commissioners shall have power to appoint and remove all officers who shall be intrusted with the ascertainment, collection and safe keeping of the revenues derived from the tolls on the canals of this State, and with the auditor of the canal department, and the superintendent of public works shall determine and fix the rates of tolls on the canals, which shall not be reduced below the rates fixed for the year 1867, until all liabilities and debts recognized by this article shall have been paid or provided for; the commissioners of the canal fund shall also have such further powers and duties as now are or may hereafter be prescribed by law, not inconsistent with this Constitution.

Mr. E. P. BROOKS moved to amend by adding the words "in the aggregate."

Mr. ALVORD—I should like to have the gentleman explain what he means. It strikes me that it is an impossibility to make a constitutional provision of that kind that will be operative at all. This is the rate of toll. We cannot fix the amount that shall be collected. That would be an absurdity.

Mr. E. P. BROOKS—It may be important, perhaps, to reduce the tolls upon salt, or upon coal, or upon lumber; and by this express provision in the Constitution, it might be claimed that the commissioners of the canal fund could not interfere with the tolls at all as now established. I wish to do away with any doubt on that subject, and to say that they shall not reduce them in the aggregate; that the amount shall not be less than now; so that they may increase it upon salt and reduce it upon coal. That is the idea.

Mr. VERPLANCK—I move to strike from the section the following words:

"Which shall not be reduced below the rates fixed for the year 1867, until all liabilities and debts recognized by this article shall have been paid or provided for."

It is proposed to prevent the canal board from altering the rates of toll until all the debts for which the canal revenues are pledged by the Constitution are paid. It is assumed that the canal tolls as now established, were adopted with a full understanding of the question, and so wisely fixed that no subsequent canal board or Legislature shall be allowed to alter the rate. This Convention will hardly adopt an article of that kind. If they have been fixed wisely for the year 1867, no man in the Convention will undertake to say that for the next twenty years, or ten years, that rate is properly established. The business and commerce of the country is con-

stantly changing. New avenues of transportation are being established. It must be recollected that the canal is to compete, to some extent, with the railroads of the State, in reference to transportation. Now, we cannot say that next year, or the year after, or three years hence, it may not be of the highest importance, with reference to the action of the railroads, which run through the entire length of our State, that the rates fixed upon some articles, should be changed. The coal trade is in its infancy. The business in that line has scarcely commenced in this State. Who can say that the tolls upon coal are now properly fixed? Upon that single subject I have the highest authority for saying that those tolls are now very improperly fixed. The whole of western New York is dissatisfied with the rate of tolls upon coal. There is no reason why Buffalo and the West should not have the rates of toll upon coal brought by the canal, greatly reduced. That question has been presented to the canal board, and the canal board by a bare majority of one vote, refused to change these tolls. This is a question on which the canal board are, and have been for years past, divided. A knife made in foreign countries pays the same rate of toll upon our canals that iron ore pays, and no more. I speak of these things only for the purpose of saying that in view of the business the canals are hereafter to do; in view of the competition they are to have with the railroads of the State; in view of the fact that there will be quite as much wisdom in the future as in the past; that it is improper for this Convention to declare that the rate of tolls as now established shall not be changed.

Mr. ALVORD—We have now the position which has been taken by Buffalo from the very beginning of this question in regard to the canal tolls; and that is, to reduce them. It has been their constant cry for the last twelve or fifteen years. I take the position that no reduction of the canal tolls in the past has ever operated to increase the volume of business upon the canals. Those tolls make a very small proportion of the charge for the transportation of property upon the line of the canals. The history of the canals of this State, in that regard, is a very brief one. In 1846, under that Constitution, there was no proposition made by means of which the canal tolls could remain fixed, but they were at the option of the canal board. In 1854, at the time of the amendment of the Constitution, by means of which the enlargement was permitted to progress, after it had for a long time been in abeyance, the Constitution provided that the tolls should not be reduced below the mark of 1852 without the consent of the Legislature. If the canal board desire to reduce the tolls, below the tariff of 1852, they can only do it with the consent of the Legislature. For some considerable number of years thereafter, the tolls remained the same as they were in 1852, not going below it, and in some instances they were higher than in 1852. The idea was inaugurated in the interest of a reduction of the tolls in order to compete with the carrying of railroads in 1857. Entire Buffalo was down here for the purpose of bringing about a result which should eventuate

in a reduction of the tolls. They were reduced, and what was the result? Why, they made no perceptible difference in the movement as compared with the movement on railroads for the two succeeding years, both being years of depression. The railroads did not keep up, so far as they were concerned, the relative proportion of the carrying trade that the canals did under that state of depression. The operation of the reduction of the tolls, for two or three years amounted to a difference to the people of this State of almost two millions of dollars. There is no earthly question, looking to the statistics at that time, in regard to movement, but if the tolls had been kept as they should have been in those years, there would have been two millions of dollars in addition to what is now in the treasury of the State, and the result to-day would have been a reduction of the canal debt to the extent of two millions of dollars. That policy in 1862 was abandoned; they commenced gradually putting the tolls up again, and they put them up until they now are very near what they were in 1854. What has been the result this year? The past month was the most profitable in the canal history of this State. There was more money paid into the treasury of the State by way of tolls in October, 1867, than in any other month in the history of the canals of this State. I say the tolls upon property which passes upon the canals to-day would not be, so far as they are concerned, of the least possible importance in reference to the growing of property along the line of the canal as against railroads. Those articles which now are taken care of by the railroads of this State are carried by the railroads, with exceptional cases, because they cannot, under any circumstances, go upon the line of the canal. They are articles that are small in bulk and large in value, and require celerity of movement, although they pay two prices as compared with the canals. Take the article of flour. There was no time during this year but what from fifty to one hundred per cent more was paid for the transportation of a barrel of flour from Buffalo and Oswego and the river than would have been the price upon the canals. Still, the great bulk of that article of commerce goes upon the railroads of the State, and over ninety-five per cent of it from the city of Buffalo. You might take off every single cent on flour, and the result would be you would get hardly any increase in the movement of flour upon the canal. Now, in regard to coal. Coal is transported upon the canal cheaper than any other article; it has the lowest rate of toll per thousand pounds per mile. What is the great anxiety so far as regards coal? The anxiety is this. Buffalo stands at the extreme of the State. The coal that comes upon the North river at Rondout cannot get to Buffalo unless it goes up here to Albany and pays toll entirely through the canal. The coal region of Pennsylvania in the neighborhood of Scranton strikes the Erie canal in the neighborhood of Syracuse. And that coal there coming upon the line of the canal paying the same price per thousand pounds per mile for its movement upon the canal, after it gets there competes successfully to the uprooting of the

business from Rondout through the whole line of the canal. It has that benefit from its location, and the reduction of toll upon coal along the canal would simply eventuate in the reduction, so far as it regards Scranton as against Philadelphia works, of tolls between those two points, and they would still retain their support. There would not be any advantage or gain to the people of Buffalo, or parties using coal within the limits of the State, except to the extent of that reduction. It would not put another pound of coal along the line of canal transportation.

Mr. VERPLANCK—That is your judgment.

Mr. ALVORD—I have no doubt in regard to it, and past experience shows it. The coal which is transported through the central portion and western portion of New York is, four-fifths of it, put upon the line of your canal, striking it at Syracuse, and any reduction in toll will do nothing but make a competition between Scranton on the one side and the Delaware and Hudson on the other. You will make it more sharp than it has been in the past. But so far as that is concerned, the Delaware and Hudson coals are now making their way toward the center of the State, and they stand, geographically, very nearly in the same situation, so far as regards our works of internal improvement, as the Scranton people, only Scranton has a connection by rail; the Delaware and Hudson have no such connection at present. But they are moving forward to meet the Albany and Susquehanna at Ninevah, and from thence across to Chenango Point, on the Syracuse and Binghamton railroad, and thence make a point upon the canal, the same as the Scranton people. And then there will be a combination to determine the price. There will not be, in my opinion, another single pound, except what grows out of the increased use of the article in consequence of the decrease of the wood of the country, to go upon the canal. Now, if we had gone to work, in 1846, and made a rigid constitutional provision that, until the work of the enlargement should have been completed and the canal debt should have been paid by the people of this State, that there should have been no deduction in the toll-sheet of the year 1846, we would have had just as much a volume of business during that entire time upon the line of the Erie canal as we have had, and we should have paid three-fourths of the canal debt of the State. The reduction of tolls upon the canal has been an entirely mistaken policy. There was a great cry a few years ago in reference to the question of merchandise. The tolls upon merchandise were reduced to an almost nominal sum, but the canals failed to receive hardly a single bale of goods in addition to that it carried before the tolls were reduced. The reason was, as I have stated, that merchandise small in bulk and great in value required celerity of movement. Dry goods, particularly, will bear the additional cost of railroad transportation. Iron and heavy articles go upon the canals. But your silks and dry goods of every name, kind and description, and all articles large in value and small in bulk, go upon the line of the railroads, and will, even though you were to charge them not a cent of

toll upon the canal. Now, I say to my friend from Erie [Mr. Verplanck], and the friends of the canals of this State, that if they desire these canals to be improved in the future, and to prevent them becoming an incubus, they have had experience enough in the past to know that the people of this State will hesitate long before they will permit themselves to be taxed for these improvements, and the only way they can look for the future maintenance and support and improvement of their canals is from the revenues to be derived from them. They should hesitate a long while before they consent to a reduction of the tolls when such a reduction will neither benefit the canals nor increase the volume of trade, but will shut the door against any possible improvement of them, now and forever. I believe that, so far as it regards the facts in this case, I have stated them correctly. I have watched the movement in regard to tolls for many long years. I have studied the movement of property upon the line of the canals, and I have failed to discover, in all of my investigations in regard to this matter, that the reduction of tolls at any time in the history of this State has of itself increased the volume of movement upon the line of the canals as against railroads. To-day, with the tolls of 1846, which were very much higher than the tolls of 1867, imposed upon property passing upon the line of the canal, the movement, so far as it regards its cost from the west to the east, is cheaper between Chicago and New York city, upon the lake, canal and river, than it has been upon the line of the railroad from Buffalo to New York—cheaper by some twenty or thirty per cent. I therefore say it is folly, upon the part at least of the canal men, to give the power into the hands of the canal board, or any other board, to change this question of tolls. If we do no more in this regard, do not let us go beyond the position taken by the amendment of 1854, declaring that the rates shall be determined by the consent of the Legislature, and in that way only. I believe, in this regard, there is no sort of question in reference to the correctness of the position I have taken; but I leave it to those who are more immediately interested in the future of the canals, and under the light of whose information the question will be decided.

Mr. GRAVES—I would ask the gentleman if he has heard the question raised in any locality, or by any partisan interest, as to the justice of the rate of tolls as now fixed, so as to apprehend a change of the rate of tolls if this provision should not be incorporated in the Constitution?

Mr. ALVORD—All I can answer is, that there has been a pressure upon the canal board from year to year, ever since I have known any thing about it, brought by certain interested individuals in this State, forwarders, not owners, of property, to bring down the tolls. They have, as the gentleman from Erie [Mr. Verplanck] has said, particularly in regard to coal, divided the canal board, and half-a-dozen times have almost carried their point. They are keeping upon the "war path" constantly in the canal board. Every spring, when the toll sheet is arranged, there are powers at Albany for the purpose of reducing the tolls, and they follow it up after the toll sheet has been

made up for the year. Four, five or six weeks are employed in reconsiderations of that sort, in order to change the tolls and get them down. I have this much to say, in addition, that when the tolls on corn were reduced, some twelve or fourteen years ago, an examination of the freight sheet will show that every particle of the reduction was made for the forwarder.

Mr. CONGER—I was about to move an amendment in pursuance of the rule that a motion to strike out a clause could not be entertained until all the provisions to perfect the clause have failed. I was about to move an amendment which would come within the scope of the remarks last made by the honorable gentleman from Onondaga, allowing the clause which my friend from Erie [Mr. Verplanck] has moved to strike out to stand, with this addition: "Except with the concurrence of the Legislature by a two-thirds vote of the members of each house." I hope the gentleman will withdraw his amendment for the present, until I make this motion.

Mr. VERPLANCK—We may be compelled to assume some such position; but feeling so secure in the position we occupy now, I would rather wait and see what the disposition of the committee is before I consent.

Mr. CONGER—I think my friend from Erie [Mr. Verplanck] has couched without his host in feeling secure in his position.

Mr. VERPLANCK—I did not intend to say I was secure in the vote of the committee; I was speaking of the fact that my amendment was founded so clearly in the right that I felt secure.

Mr. CONGER—I am prepared to indorse some part of the views which my friend from Erie entertains; but I seek to bring those views in consonance with those expressed by the gentleman from Onondaga [Mr. Alvord]. They are both right in certain aspects of the case; and the true course for the committee to adopt is the plan suggested by myself to bring the opposite views as near as possible in harmony. It is unquestionably the desire of those who make a Constitution, to found the instrument on secure and irreversible foundations. Whenever the constitution maker brings the provisions of his instrument in conflict with the laws of trade, he is sure to meet, not only a conflict, but, in the long run, a defeat. Who is there who is willing to say that he could, by a constitutional provision, secure the laws of trade in a certain direction, unless he simply declared that the laws of trade should have their way, any thing in the Constitution to the contrary notwithstanding. With the knowledge we have in regard to the power of all the interests of the individuals in society, are we prepared to say we will establish a provision in the Constitution which may possibly, and in all probability would, militate against the laws of trade? The honorable gentleman from Onondaga [Mr. Alvord] cites the present state of things in the country as evidence of how much money a certain rate of tolls will bring into the treasury. But he is very well aware that the state of things now existing is without a parallel in the history of this State. The reason so much grain has poured through the canal during the past month is that almost every mart in the country is exhausted of grain; but it

does not follow the same state of things will exist next year. While the canal board might, with propriety, reduce the rates of toll in certain exigencies, at certain times, if they thought that thereby a large transportation of merchandise could be secured, still to allow them to fix the rates of toll as they saw fit from year to year, without the approving action of the Legislature, would be to leave the tolls subject to yearly change. No friend of the canals, and no friend of the laws would desire that the rates of toll should be subject in this way to the changes of the views of the members of the board. But if, on the other hand, you say, as is affirmed here, you will never allow the rates of toll to be changed until a certain event happens, then you put yourselves in danger of receiving no patronage whatever by adhering to your rates of toll in certain exigencies of trade. I know gentlemen have advanced on this floor the idea that the canal board inflicted a great injury in the reduction of the tolls in 1859 or thereabouts. On the other hand, it was proven that, by that reduction of tolls, the canals received a large increase of trade, and the railroads suffered a large diminution of trade. The tolls were taken off at a time when there was a total prostration of the business interests of the country; it was with the greatest difficulty that freights of any kind could be moved. I am in favor of the wisdom which actuated the members of the canal board when they reduced the tolls at that time. As I intimated before, in speaking of the subject of the canals, generally to leave it in the power of the canal board to reduce the rates of toll from year to year is to do what my honorable friend from Onondaga [Mr. Alvord] says is constantly attempted to be done—to bring the canal board in conflict with the schemes of speculators, and perhaps to subject them to those schemes, for there is nothing more certain than this, that a reduction of the tolls is invariably followed by an increase of freight. I think the statistics I submitted prove that to be almost invariably the result.

Mr. HATCH—I would like the gentleman to explain why it is that freights on the canals from Buffalo to New York were twelve cents for three months of the season, while they are now twenty-five cents.

Mr. CONGER—That is unquestionably in obedience to the laws of trade. I do not mean to say that the dependence of freight upon tolls is invariable. If there was an invariable law we could very soon define and estimate its conditions, and act accordingly. But there is no invariable law; it is the most fickle state of things that can be known to exist. If there are five hundred thousand bushels to be shipped by a certain route, and there are only enough boats to take three hundred thousand bushels, the price of freight will necessarily rise, owing to the desire of individuals to get their goods forward in advance of the rest. That is one reason why freights rise so rapidly, as at Buffalo at certain times of the year. We cannot provide against such irregularities of trade. It is wholly unnecessary to bring such a state of facts into this question. What I want to do is to secure, as my honorable friend from Onondaga [Mr. Alvord] desires, a uniform rate of toll. But it seems to me to be the

height of folly to declare in the Constitution that the rate of toll shall never be changed until the happening of a certain event which is to take place some ten or fifteen years hence. Therefore I think my honorable friend from Onondaga must consent, as he intimated he possibly would, that this rule may be changed in an exigency by the action of the Legislature. I propose to use the language of the Constitution in the amendment of 1854, where the rate of tolls can be changed by the concurrence of the Legislature. I am willing to go somewhat farther than that amendment, and require there should be a two-thirds vote of each house. I am fully convinced that is necessary for us, in order to carry out the financial scheme as already perfected, to secure the present rates of tolls as far as it is practicable to secure them. But I see the folly, I see the impracticability of undertaking to declare by a constitutional provision that they shall never be reduced by any authority unless by the authority of the people. I think, therefore, it is the part of wisdom to bring these extreme views together, and not allow the rates of tolls, as my friend from Erie [Mr. Verplanck] wishes, to fluctuate from year to year, according to the power which forwarders or other interested persons may be able to exercise in the councils of the canal board. Yet, on the other hand, we should not make them so fixed and absolute that it would require the special submission of a provision to amend the Constitution in order to get out of the difficulty. I think a Legislature, by a two-thirds vote, is the proper authority to declare that these tolls should, in a given exigency, be reduced. It is with these views, which I hope I have expressed with a certain clearness, that I think the committee will have no difficulty in accepting the amendment which I have offered as the best solution of the difficulty.

The CHAIRMAN—The pending question is on the motion of the gentleman from Erie [Mr. Verplanck], to strike out from and including the word "which" in the eighth line to and including the word "for" in the eleventh line.

Mr. HATCH—I am opposed to any restriction upon the regulation of tolls. The tolls should be so adjusted as to secure the trade to our canals—to pay the canal debt, and then reduced to the minimum sum sufficient to keep the canals in repair and improve them. This is our true State policy toward our canal system. There is nothing clearer to those who have had experience and knowledge in relation to the movements of trade upon the canals than that, in order to meet the gigantic rivalries around us for the control of our western trade, we must have cheaper transportation in some form or other. Whether this is to be accomplished by the reduction of tolls, the improved management of our canals, or the enlargement of the canals, remains to be settled. This is a fact, in the movements of trade from the West to the East, that is recognized by all public men and public journals. It seems to me that it would be a stupendous act of folly on the part of this Convention to attempt to tie up this question of tolls for twenty years, as proposed by this section of the Canal Committee. No matter what the action of this Convention may be now, these tolls will have to be reduced, at least two

or three cents a bushel on grain from Buffalo to Troy, if we expect to retain our supremacy in the western carrying trade. You cannot retain the trade of your canals without you reduce the cost of transportation—the tolls and the carriers' charges. Why should you not leave these canals to be managed as railroads are managed, and let the tolls be fixed from time to time as managers of railroads fix their freight tariffs according to the demands of trade, and to secure their business? It seems to me that that is the wise and only way that these canals should be managed. The only way the western trade can be preserved to the canals is by leaving the power to the Legislature or the canal board to arrange the toll sheet as competition may demand. That is what the directors of railroads do—they fix their tariffs so as to secure business; and I think that power should be left either with the Legislature or the canal board to do the same for the canals. The gentleman from Onondaga [Mr. Alvord] refers to the fact that flour goes altogether by rail. I suppose he speaks of the railways from Buffalo to New York, and his statement implies that it is carried by rail on account of the saving of time, as if flour would necessarily go by railways like a certain class of freight which always is carried by railways, irrespective of the cost of transportation. Now, there is a fallacy in that statement. The gentleman is mistaken. Put down the tolls as the railroads put down their freights, and every barrel of flour will go from Buffalo to New York by the canal. Almost every barrel of flour comes now from the West to Buffalo upon the lakes. This shows that neither time or distance controls now the movement of flour. It is the exorbitant charge of transportation upon flour by canal that drives it from the canal.

Mr. ALVORD—Will the gentleman allow me to ask him a question? I wish to ask him whether to-day the price of taking a barrel of flour by rail to the city of New York from Buffalo, is not greater than the cost of taking it upon the canals, including the full amount of the canal toll?

Mr. HATCH—The gentleman is mistaken. If you put down the tolls to ten cents upon flour, and I have consulted with the forwarders of Buffalo about it, the canals will carry every barrel of flour; and I want to repeat, that nearly all the flour comes from the West to Buffalo during the season of navigation by the lakes instead of by rail. Now, I trust that whatever this Convention may do, they will leave this power somewhere to fix the rate of tolls so as to retain the trade to our canals.

Mr. ALVORD—Is it not a fact that the flour that comes by the lakes to Buffalo, comes almost wholly on vessels propelled by steam?

Mr. HATCH—There may be some flour that comes by steam upon the lakes, but I tell the gentleman from Onondaga that seven-tenths of that vast cereal product from the West is transported on sail vessels instead of railways, although time and distance are doubled in the transportation of property through the lakes to Buffalo over all other means of transit. The lake marine has now more than three times the ton-

nage it had when railways were first inaugurated between the Western and Eastern States, and the tonnage in sail vessels is increasing year by year largely over that of steam vessels. I hope this committee will adopt no measure that will cripple the ability of the Erie canal and prevent it from maintaining its commercial supremacy as a most important channel in the inland navigation of this country.

Mr. VERPLANCK—The gentleman from Onondaga [Mr. Alvord] does not meet the question. His argument is based solely upon the assumption, that some years ago, under peculiar circumstances, the canal board by reducing the tolls lost money to the State. Now, does that prove that the reduction of the canal tolls in the future would have the same effect? But I am not discussing this question, as the gentleman seems to suppose, upon the ground that a reduction of the tolls may become necessary. It may become necessary to increase the tolls, and what I desire is that the canal board should have the power to reduce or increase the tolls as the exigencies of trade may require. I am not here to speak particularly for the West. I propose to take a broader view of this subject, and to settle this question on principles which will protect the interests of the State, and secure the carrying trade. Can the gentleman tell me, in view of the fact which he states, that nine-tenths of the flour goes by rail, why the State should exact twenty-three and a half cents toll on a barrel of flour from Buffalo to Troy? If we want this trade, why not reduce the tolls? Suppose the canal tolls were reduced to ten cents per barrel, then, except in a single contingency, the canals would carry all the flour; that contingency is the mutability of prices and slow rate at which flour is now carried by the canals.

Mr. ALVORD—Will the gentleman permit me to ask him a question?

Mr. VERPLANCK—Certainly.

Mr. ALVORD—I would repeat the same question. I asked his colleague, whether or not ninety-five per cent of all the flour does not to-day go on the railroads, while the charge on the railroad is twenty-three and a half cents more than it is on the canals, including the toll?

Mr. VERPLANCK—I am very glad that the gentleman has asked me the question. It is an object for the forwarders to get their flour through speedily, and that fact and the high rate of tolls forces the flour to the railroads. But I do not propose to go into this discussion in detail. There is another subject in which the gentleman from Onondaga has some personal interest. Formerly, and when our lake tonnage was small, the salt manufacturies at Syracuse furnished ballast for the vessels going West; but now the demand for salt at the West is not sufficient to furnish ballast for vessels, and they are obliged to take sand. If it were not for the action of the canal board, notwithstanding the fact that we have lake ports which are large exporters of coal, we could furnish Chicago and the whole West with coal, which we want for ballast.

Mr. ALVORD—If the toll is reduced on coal on the line of the canal, will not the same advantage still accrue to the Scranton company

who strike the canal at the center, that they have now?

Mr. VERPLANCK—To some extent; but why not allow coal to come from both Scranton and Rondout?

Mr. ALVORD—I should like to have the gentleman demonstrate to this committee how the reduction of the toll on coal is going to increase the quantity carried on the canal beyond what it is now.

Mr. VERPLANCK—I suppose that any thing which will reduce the price of coal to the Buffalo or Chicago consumer will increase the quantity of coal transported over our canals.

Mr. ALVORD—How much is the toll upon a ton of coal from the city of Albany to the city of Buffalo?

Mr. VERPLANCK—It is a great deal more than it should be.

Mr. ALVORD—Forty-six cents, I believe.

Mr. VERPLANCK—You are mistaken; it is seventy cents.

Mr. ALVORD—Seventy cents?

Mr. VERPLANCK—Yes; and it should be twenty-five cents. But the gentleman is begging the question. I am merely insisting that the wisdom which regulated the present rate of canal tolls is not so great that it should be permitted to control this question for the next twenty years. In regulating the tolls on the canals in the future we shall have the benefit of experience, the state of the country, the condition of trade, and a knowledge of what the railroads are doing, and where the trade is tending, to guide us. I think one suggestion should control the action of this committee on this question. Suppose any gentleman of the committee was a stockholder in the New York Central railroad, and the board of direction, or this Convention, should determine that the Central road should not vary their rate of freight from what it is for the next twenty years. What would be the effect of such a determination upon the price of the stock of that road? If it would not be wisdom to deal thus with the railroads, it cannot be wise for the State to adopt such a policy in regard to its own property, or to bind itself up by such action. The gentleman seems to suppose that a reduction of the tolls will be demanded by the West, particularly by Buffalo, and will be secured. It will not be secured unless it is for the best interests of the State. This canal board is not a Buffalo board. We have learned that in the past. It is a board for the State of New York; it is a board every member of which takes an oath to discharge the duties of the office to the best of his ability; it is a board whose attention is directed to the demands of the carrying trade and every thing connected with it, who have all this information about the trade and the ability of the canals, and they are the proper persons to judge upon this subject; and this constitutional prohibition is just as improper upon a State work like the canals as it would be upon a corporation like the Central railroad.

Mr. MURPHY—Will the gentleman state what amount, if any, of coal was exported from the State of New York, by way of Buffalo, last year?

Mr. VERPLANCK—I do not know the amount.

I know that it was a subject of general complaint on the part of the carriers, and that it was a prevalent idea that they could supply the West with coal if the tolls were reduced.

Mr. MURPHY—Is there any such trade?

Mr. VERPLANCK—Yes; there is such a trade.

Mr. MURPHY—To any amount?

Mr. VERPLANCK—Yes, to a considerable amount. Now, my friend from Rockland [Mr. Conger] proposes, instead of having an executive committee, as a corporation would have, to settle this question, that we shall have, in addition to the vote of the canal board, a vote of two-thirds of the members of the Legislature to regulate the tolls. In 1854, when this amendment of the Constitution restricted the action of the canal board upon the tolls, it was contended that the canal debt was so great that it could never be paid. The subsequent history of the canals has dissipated that idea, and we now know that the debt with which the canals are charged will be paid in a few years, and therefore the reason for this additional restriction does not now exist. Why not allow your canal board, then, to regulate this matter for the State, as you would allow the executive committee of a corporation to regulate the same question for the corporation? What better executive committee can you have than the canal board, composed of members from different parts of the State, conversant with the whole subject, and restrained and controlled by a regard for the true interests of the whole State, watched by the men engaged in this traffic, and watched also by men outside of this interest? Why require this board to go to the Legislature when their own judgment in the matter must necessarily be better than any that could be given by the Legislature? It seems to me that the property of the State should be managed as an individual would manage his property, or as a corporation would manage their property; and what would be thought of a man who had a house in the city of New York and who should determine that, for twenty years to come, the rent of that house should be neither increased nor diminished? What would be thought of a railroad corporation which should adopt such a rule? As I said before, the existing legislative restriction was adopted at a time when it was feared that the canal debt could not be paid by canal revenues and must be paid by taxation. I am glad to see the gentleman from Ulster [Mr. Hardenburgh] in his seat, because I think the interest of the people he immediately represents will induce him to set off his vote against the vote of the gentleman from Onondaga [Mr. Alvord], and give the Roundout coal a fair chance to compete on the canals with the Scranton coal. I am not afraid of the fluctuation of canal tolls predicted by my friend from Rockland [Mr. Conger]. There will be no fluctuations from year to year unless the state of trade and the requirements of the country demand it.

Mr. CONGER—I am perfectly willing to say that if the State was out of debt and the canal revenues were not pledged to the public creditor, I would be willing to go with my honorable friend from Erie, and have the revenues from the canals

not only reduced to the lowest possible point, but also left to the discretion of the canal board; but it is because of the constitutional pledge which has been given that we are obliged to use some supervisory care over the action of the canal board.

Mr. VERPLANCK—I ask the gentleman, is it fair or honorable for the State of New York, with the canal revenues pledged to the public creditor, while that debt remains unpaid, to say that the canal tolls shall be fixed unchangeably to-day, when the state of trade may be such that with the tolls so fixed we may not be able to give the public creditor a cent? You should leave that matter to your sworn State officers to settle in view of the best interests of the State and of the public creditor.

Mr. E. P. BROOKS—While I concur in the general views expressed by the gentleman from Onondaga [Mr. Alvord], that the canals should be so managed as to produce the greatest amount of revenue consistent with the greatest amount of trade that can be secured to the canals, I do not believe it would be wise for this Convention to establish a toll sheet which shall remain unaltered for the next twenty years. The canal board, as has been said here, have been called upon annually to revise their toll sheet, either through the importunity of forwarders or the exigencies of business, and although the one we have now, may be the embodiment of wisdom at the present time, I do not believe that it will not require revision for the next twenty years. But, sir, I am in favor of a motion to exempt, for the reason stated by him, that this article is creating a board which will be entirely competent to fix the rates of toll. I believe we should leave it to their discretion, and if it is found that they have abused the trust, the legislature can easily come in with a remedy. It is not necessary to fix it in the Constitution; leave it to the canal board, and if they regulate the tolls improperly, the legislature can interfere. I therefore hope that the amendment of the gentleman from Erie [Mr. Verplanck], will prevail.

Mr. CONGER—I wish now to offer the following amendment: After the words "provided for," add the following words: "except with the concurrence of the Legislature by a two-thirds vote of the members of each house." I will say very briefly that the fallacy of the gentlemen who argue that a greater amount of revenue to the State and that benefit and security to the public creditor, would follow from a reduction of tolls, lies in this: A careful examination of the statements of the canal board, for a series of years, shows an average of so many tons of food, so many tons of merchandise, so many tons of other articles, not including coal, and so many tons of the products of the forest, as an average annual amount of freight carried on the canals. Now, it is plain as the simplest proposition of the rule of three, taking so many thousand tons at a certain amount per ton of one kind, and so on through all the kinds, if you will get so many millions of dollars as freight which the canal earns for that year, reduce the rate fifty per cent, and you will just get one-half the amount. Will gentlemen say it is an additional security

to the public creditor, that the canal board should have the facility or power of reducing the rate, when by the simplest sort of calculation, your whole amount of toll goes down below what is absolutely necessary to set aside enough to preserve the sinking fund and pay the public creditors, if you cut it down fifty per cent.

Mr. VERPLANCK—Will the gentleman allow me to ask him a question?

Mr. CONGER—Certainly.

Mr. VERPLANCK—If under the present rate of tolls you should drive some one of these articles from the canals, how would you get the fifty per cent?

Mr. CONGER—I will answer the gentleman for it strikes me the answer comes up very clearly. If there should be a falling off of the supply of any of these leading items, as a source of freight and revenue, the canal board will soon discover it, and they can report to the Legislature, and the Legislature as a revisory board, can see whether it is really so, or whether it is a scheme between the canal board and the forwarders. It is a matter of too great moment, as far as the public creditor is concerned, to allow a board to be operated upon by any such schemes of a particular class of men, and to decide a question irrevocably, and to place the public credit where, by the law, taxation immediately steps in to supply the deficiency. It is a question between the tax payers and the schemes of the forwarders. As I have shown gentlemen before, and they must see it is perfectly clear, the moment you begin to reduce the tolls on the canals, which are so low now that there is no transportation so cheap in the world, you will meet with two things: first, you are met by the increased charges of the forwarders, who take advantage of the diminution of tolls in order to swell their charges, the cost to the consumer being the same, it being a long while generally before the consumer finds out the difference; or, you are met with this other commercial difficulty, when there is a reduction upon your canals to a large amount, that there is an effort on the part of the producer to send an unnecessary large amount to market, and that increases at once the demand for boats on the canals, and the charges of the carrier immediately go up. There is no benefit at all to the consumer; the whole benefit results to the forwarding class, and, in the event of a deficiency, the tax payer is called upon for the difference.

Mr. PROSSER—Do I understand the gentleman as claiming that the carriers' charge is governed by or at all influenced by the rate of toll?

Mr. CONGER—In one sense, unquestionably; in another sense, not.

Mr. PROSSER—Will the gentleman please state in what sense?

Mr. CONGER—In the sense in which there is a determination that a certain article shall cost the consumer so much money; that a barrel of flour shall cost so much in the city of New York. It makes no matter how much or how little the producer gets for it, for, between the point where the article leaves the producer and the point where it reaches the consumer, there is an intermediate system of charges, which is distributed according to a law which is neither invariable, subject to any

rule, or is in many cases within the rules of fairness or probity.

Mr. PROSSER—Is the gentleman aware that the boats upon the canals of this State are, and have been for many years, owned by the men on board of them, in eight or nine tenths of the cases, and the rate of freight is entirely controlled, and has been for years, by competition between the boatmen?

Mr. CONGER—I am perfectly willing to admit that.

Mr. PROSSER—That is all I wish.

Mr. CONGER—That is a fact which I have admitted in a previous statement. It is a competition with no State control over it, and the moment there is a large demand for the forwarding of grain, or other matters at any port, there is a bidding on the part of the person who desires to ship the goods for the boats, and the price rises.

Mr. PROSSER—But the price to the carrier is precisely what it would be without it if there were no tolls. That is the rule which obtains, and must necessarily.

Mr. CONGER—That does not follow, by any means.

Mr. PROSSER—Inevitably.

Mr. CONGER—It may be so in some cases, but gentlemen are perfectly well aware, in reference to the market of the city of New York, that the moment the price of flour or grain reaches a certain point, it will meet with the competition of the California and Southern markets, and then the high charges would be arrested. I am perfectly well convinced, as much as is said about the productive power of the West, and the freedom of our canals as free, navigable streams, it being compared sometimes to the freedom of the ocean, that if it were not for the competition of the Southern and Pacific markets, flour would, as it threatened to be six months ago, have been carried up in the city of New York to twenty-five dollars a barrel. Nothing in the world saved that but the competition of flour which was brought from California via Liverpool, in sacks, to the city of New York. I hate to go over these matters, but it seems to be necessary to remind members of the committee that in this attempt to accommodate a constitutional law to the laws of trade, there are so many variable elements which express the laws of trade, that it is quite impossible to make any thing like a permanent rule. Therefore, I am willing to go with gentlemen, that this rule in the Constitution shall not be permanent; but I am not willing to go as far as they desire, and leave the whole discretion in the hands of three, four or five men.

Mr. E. BROOKS—I wish to make a remark or two upon the amendment which is now under consideration, and upon the original proposition as made by the chairman of the committee and by the Committee on Canals. This presents itself to the Convention in two aspects. First, the financial question; secondly, the commercial question. I can very well conceive that every member of this Convention, interested in the finances of the State, desires the protecting of the debt of the State and that all asking the security resulting from the canal revenues, should wish to impose in the Constitution just such limits as will secure the

largest amount of revenue from these canal tolls. But, sir, there is a very great danger, in the wish to protect the financial interests of the State, that we may not only fail in that, but may largely sacrifice the commercial interests of the State. This Convention has settled one or two principles very important in themselves. The first is, there shall be no enlargement of the Erie canal, and I take it for granted the debates in the early part of the session of this Convention have demonstrated this fact, for the argument was exhausted upon one side and the other, and so far as the Convention voted upon the question, it was, that there should be no enlargement of the Erie canal but that the surplus revenues might be devoted, after the payment of the public debt, to the improvement of the canal. This question being settled, and my friend upon my left [Mr. Hatch] may rely upon that fact, what is done for improvement of trade must be done by the regulation of tolls. I cannot conceive a more unwise act, for a body like this, than to put into the fundamental law of the State a provision that for twenty years to come, no matter what may happen, no matter what may be the improvements in the States of Pennsylvania, Maryland and Virginia and the West, in regard to the commerce of the West, leading to the sea-board, the Legislature shall not have the power of saying, there shall be any reduction of tolls from the year 1867 to the year 1887. It seems to me preposterous; it seems to be dangerous, and I trust this Convention will not agree to any thing of that sort. Now, sir, I wish to say a word or two, and a word or two only, in regard to the commercial interests of this question, upon the sea-board, as no gentleman from New York has thought proper to make any remarks upon the subject. The inland commerce of this country, as I have once before said, is a great deal more important in its aggregate and its detail than the foreign commerce of the country is to the port of New York, great as is the foreign commerce and great as are its interests to us. It is larger in the amount of money; it is a great deal larger in the aggregate of values, and it is to the consumers of the country of a vast deal more importance than the foreign commerce. Therefore, it is absolutely necessary, whether you look at it as a financial question, or whether you regard it in its commercial importance, that these tolls should be so regulated as to secure to the State of New York all those interests which belong to it, whether they be financial in their character or commercial in their character. And in regard to these canals of ours, which have contributed so much to the wealth of the State and so much to the wealth of the country, and upon the revenues from which we depend for the reduction of our debt very largely, if we are to consult our own interests, commercially or financially, it is morally impossible with our eyes open, that we should insist upon inserting in the Constitution of the State a prohibition against the reduction of tolls. It has been said by the gentleman from Erie [Mr. Verplanck] that the Legislature is hardly the body to submit such a question as this to, because, in their greatly diversified interests, they are not as intelligent as they might

be, and have not that interest they ought to have in arriving at a proper conclusion upon a subject of so much importance. Why, sir, that might be said of this Convention even more than of any Legislature which may succeed it; for any Legislature which may convene hereafter, under the constant pressure of public interests, will be enabled to act as intelligently upon a subject of this importance as the members of this Convention possibly can. I do not believe we can adopt any rule better than the law we have under the amended Constitution of 1854, which is to give to the canal board and to the Legislature the proper regulation of a question of this importance. They have the regulation of tolls, and have the power to act in the general interests of the State in the regulation of those tolls; and, in my judgment, we had better leave it where it is. One word more, and that is in regard to commerce. Commerce is a thing not to be regulated always by dollars and cents in the interests of a commonwealth like this. Whatever enlarges the property of the State, whatever increases its general welfare, to speak in general terms, whatever contributes to the greatest good of the greatest number of people, is to be considered, as well as the mere question of the finances of the State. And it may be in regard to these great rival routes which are growing up all around us, and which there seemed to be an indisposition to realize when we were here in the summer months—it may be we do not have our eyes open with regard to these routes. The remark which was made here last night with regard to New England capital, which has been introduced into the northern counties of this State, abstracting vast amounts of money and wealth from our great commercial emporium to the city of Boston and other cities in New England, should open our eyes to a question of this importance. We never have been in this State at all alive to the commercial interests of the State, or to the internal commerce of the State, or to the western commerce of the country, with regard to its importance to the great commercial emporium of the country. They are both important; but every man who is a careful observer of what is transpiring about him will see that the railroads of the country are constantly fighting the canals; and if you insert in the fundamental law of the State a provision that the canal tolls shall not be reduced below those prescribed for the year 1867, the railroads of the country will take that as a text and a landmark, and endeavor in every way in their power to reduce tolls below the standard which is here imposed. It strikes me as extremely unwise to insert any such provision in the Constitution.

Mr. ALVORD—I will call the attention of the committee to page 24 of the report, as the result of the investigation of the Committee on Canals, in reference to this question of tolls. At the rate existing in 1846, when the present Constitution was adopted, the receipts for 1866 would have been \$6,930,264, or \$2,477,039 in excess of the sum actually obtained. Going to the next paragraph, in reference to the experiment adopted from 1858 to 1860, when there was an additional change by the reduction of the tolls, it resulted

in no substantial increase, but the State sustained a loss of \$1,998,966 or more than the difference of the entire floating debt in those three years, and before they restored the present rate of tolls the loss was over \$2,600,000. It is true that the Committee on Canals, in making up this article, had in contemplation the probable acquiescence of the Convention, in the direction of passing the article which contemplated the immediate enlargement of the Erie canal. It is not the action of the Convention, as I understand it, to the extent intimated by the gentleman from Richmond [Mr. E. Brooks], in the opposite direction; but the action of the present Convention in reference to this question, is to this extent: that a certain fixed sum shall be collected from the canal tolls in each year, for the purpose of retiring the present canal indebtedness, and that whatever may be over and above that in each year, in the treasury, may be appropriated by the Legislature for the future improvement of the canals, with a distinct intimation upon the part of all who have spoken upon the subject that in the opinion of this Convention an absolute necessity exists for the removal of certain obstructions at present in the Erie canal, and for the giving of a larger volume of water to the present prism of the canal, in order that it may be enabled to operate its business. It has been conceded upon the floor of this Convention, in the debates upon this matter, that the wall benches must, of necessity for the benefit of the navigation of the canal, be removed, and that in addition thereto, a large supply of water upon the long level of the canal must be obtained; but we are confined by the terms of the article as now agreed to, to doing that work from the revenues of the canal; and the action of the Convention here, so far as that is concerned, says, at least by intendment, to the people of this State through the Legislature, that this shall not be followed by taxation to do any of these improvements. Therefore I say to my friend from Erie [Mr. Verplanck], and to those who really have the interest of the canals at heart, pause and hesitate before you permit yourselves to be in a position where, by possibility, the power to do these necessary improvements shall be taken away from you. I grant, with all others, that it would be largely for the benefit and advantage of this State, provided this work was completed even according to the original intendment, and the debts were paid, if we could reduce in some way or other the expense of transportation upon the line; if it became necessary to do that, after setting the debts apart, by reducing the tolls. Why, then, reduce them now? But we run the risk and hazard of permitting our canals absolutely to run down, in consequence of the fact that these things are not done. What are the facts to-day, upon the line of the Erie canal? On the Jordan level, west of Syracuse, upon which these wall benches are left, the canal is only forty-two feet upon the bottom in width, and these large boats are constantly rubbing against the side of the banks, and those banks are sliding into the canal, so that with the utmost vigilance upon the part of the State officers, in the spring clearing out seven feet in depth, on the line of the canal at that point, and removing all impedi-

ments and obstructions, from the very operation of the wall benches, and the collision of the boats along that line, before summer is half over it fills up to the depth of a foot or half a foot. That is one great impediment to navigation upon the canal at that point, where the boats are running aground, two, or three, or four miles along there, in consequence of these wall benches.

Mr. E. BROOKS—We have agreed that these wall benches shall be removed and repaired; and in the second place, with the capacity it has to-day, it yielded more revenue during the last two weeks of the month of October 1847, than it has yielded since the year 1826, when the canal was made.

Mr. ALVORD—I understand all that, but that is not an answer to the proposition I am making. It is that the reduction of the tolls will necessarily eventuate, without a very large increase of the volume of business, upon the mere ability upon the part of the canal to pay the requirements of the Constitution as we have passed it, to provide for the removal of these wall benches, because we have said in the Constitution, in so many words, so far as our action is concerned, that the canal shall be confined in the future to the surplus over and above the \$2,418,000 to be paid each year. That is the position we have taken; we have taken that unmistakably, we have put that upon the record, and it is a guide for the Legislature in the future to go by, and the people of the State, if they ratify the Constitution will so instruct the Legislature to do, that there shall not be, under any pretext, any resort to taxation for the purpose of making any improvements upon the line of the canals. I have no objection to the proposition of the gentleman from Rockland, [Mr. Conger,] if it had been that we had agreed that this work of improvement should go on almost immediately, I should have insisted upon the original proposition of the committee on canals, but so far as it regards the matter now, we are in a different position; there is not that immediate necessity for getting together the funds for the improvements that there would have been, if we had adopted the original proposition of the committee. But let us look at it for a moment, with reference to the position taken by the gentleman from Erie, [Mr. Verplanck]. It proposes to take from the Legislature any power in this matter, and to leave it in the hands of the canal board alone, to determine in the future in regard to the matter of tolls. I take it, while the canal board, to the extent to which they have gone, under the amended Constitution of 1854, have the right to regulate the tolls upward, it would be perfectly proper, but if they should undertake, with any idea or view of their own, to reduce them, they should be compelled to at least, have the advice and consent of the Legislature, as the case may be.

Mr. PROSSER—I would like to ask the gentleman a question. I entirely misunderstand the object of the amendment of the gentleman from Erie [Mr. Verplanck] if it takes from the power of the Legislature the entire authority over this question. I understood the gentleman to argue just now, that the power of the Legislature is taken away. I do not so understand it.

Mr. ALVORD—It puts it into the Constitution that this board are the board to determine in regard to that question, and it gives no power under Heaven to the Legislature to interfere under any circumstances.

Mr. PROSSER—The motion to strike out is broader than I thought it was.

Mr. ALVORD—It leaves it where the Legislature has no authority in the premises whatever. It puts it directly in the hands of this board without any power on the part of the Legislature to say aye or no with regard to it.

Mr. HATCH—Is not that right?

Mr. ALVORD—No, sir.

Mr. HATCH—Why?

Mr. ALVORD—The reason why I am not willing to leave it entirely to the Legislature is, in the first instance, that so far as regards the regulation of tolls, it more properly belongs to those officers who have charge of the management and direction of the canals. They are looking over this whole matter from day to day, and from hour to hour, and they can see better what is necessary for the interests of the State. I believe they will make up their minds what is required, and if they see fit to recommend a reduction in certain instances, they can give their reasons for it, and when the subject is brought before the Legislature, and explained to them, the Legislature can act upon that knowledge, and it will be well done. But if you leave it to the Legislature alone, my friends from Erie will come down to the Legislature, and besiege them to make a reduction upon the tolls upon articles not for the benefit of the consumer or of the producer but of the forwarder, when it will be an injury to the revenues of the State, and no benefit whatever to any of the people of the State. I am in favor of the proposition of the gentleman from Rockland [Mr. Conger]. I am in favor of it because I am aware of the fact, that under the circumstances, it is the best thing we can do, although I have no doubt that in the result it would be beneficial to tie it up for twenty years, so that it could not be altered under any exigency, yet I think the next best course would be to leave it to the power of two separate and distinct bodies, acting in concert, before any reduction can take place. No one of the gentlemen who have talked upon the subject will deny, that in the face and eyes of the present constitutional provision, \$1,998,000 was lost to the people of the State in the years 1858, 1859 and 1860, by the unnecessary reduction of the tolls, from the action of the canal board, in conjunction with the consent of the Legislature. That cannot be denied, if gentlemen will look at the statistics. During those exceptional years, the volume of trade, both upon the road and upon the canals fell off, and fell off in larger proportion upon the railroads than upon the canals, notwithstanding that reduction. I, therefore, say, that so far as the canals were concerned, they might have retained without difficulty that amount of \$1,998,000.

Mr. VERPLANCK—How do you know that, without the reduction of the tolls, the canals would have carried the amount they actually carried in those years?

Mr. ALVORD—The reduction of tolls was made upon articles that never went upon the railroads, and have not to this day, gone upon the railroad.

Mr. VERPLANCK—Flour.

Mr. ALVORD—Flour? I will ask the gentleman from Erie if ninety-five per cent of the flour in 1858, 1859, and 1860, was not carried by the railroads; and I will ask him also, whether, today, instead of five per cent, there is one per cent of the flour carried upon the canals from Buffalo?

Mr. VERPLANCK—There is.

Mr. ALVORD—From Oswego, it is somewhat different; for there about seventy-five per cent of the flour is carried upon the line of the railway, and twenty-five per cent upon the canal; but at Buffalo, at no time within the last ten years, has more than ten per cent (and most of the time it has been below three per cent) been carried upon the line of the canal; but it has gone by rail. The reduction of tolls in 1858, 1859 and 1860, was upon articles carried exclusively upon the canal and never carried by rail. For these reasons I certainly am in favor of having it so arranged, if possible, that there shall not be an unnecessary reduction of tolls. If they are thus unnecessarily reduced, the work that is necessary to put the present canals in good condition, will, as a matter of necessity, be delayed. And there will be more danger of having fraud upon the line of the canal in consequence of that delay than there will be in consequence of any extra outlay from the tolls.

Mr. VERPLANCK—This portion of the article which I propose to strike out, was placed there by the Canal Committee in the hope and expectation that this Convention would adopt the recommendation of the Canal Committee in their plan for immediately improving the canal by borrowing the sum of \$8,000,000 for that purpose. It was supposed, as I know from conversation with members of that committee, that it would be necessary to give this guaranty, and that the Convention would not consent to such a loan without it. When the Convention refused to adopt the recommendation of the Canal Committee, the reason for this recommendation was entirely gone. I make these remarks for the purpose of showing the Convention that this clause, as it now stands in the article, has not the sanction of the Canal Committee, and that it is entitled to no weight as the recommendation of the Canal Committee; and to show that no member of the Canal Committee, looking at this subject fairly, will feel any longer bound by the clause which I have moved to strike out. The gentleman from Onondaga [Mr. Alvord], after I made my motion to strike out this clause, insisted that it should be retained as it stands; and he has argued the case at length on that proposition; but he now agrees that it is of no force as a recommendation from the Canal Committee. The gentleman reads from the report of the Canal Committee the statement of the loss of tolls by the reduction of 1858. In the remarks I have heretofore made I have assumed that to be the fact, but that does not affect the question, because it does not follow that if this is left to a canal board composed of the Com-

troller, the Treasurer, the Attorney-General, the auditor of the canal department, and the superintendent of public works, they will, as the gentleman seems to suppose, certainly reduce the rates of toll, or that, if reduced, there would be a falling off of canal revenue. It may be that the canal board, considering the state of trade in the country, would at times increase the tolls on some or all kinds of freight. We are told that we must leave this to the Legislature, not directly, but after the canal board shall have acted. The interest of the State that coal from Rondout, which is carried the whole length of the Erie canal, should be carried at the rate of toll which would enable it to compete with Scranton coal, which is carried half the length of the canal, yet when that proposition came before the canal board and the Legislature, more money was expended to defeat it than any subject before the Legislature. 'If this question is left to the Legislature it will tend to produce a system of log-rolling and corruption fatal to the prosperity of the canals. One word more. In 1854, the Constitution of 1846 having tied up the power of the Legislature so that they could not improve the canal, the improvement of the canal having become a necessity, an amendment was proposed by the Legislature and adopted by the people, authorizing the borrowing and appropriation of \$9,500,000 for the benefit of the canals for the next four years, and \$1,500,000 to pay a debt which, it was claimed, they then owed. It was thought that it was necessary to provide that the canal tolls should not be reduced without the concurrence of the Legislature, in order to secure the taking of the necessary loan at fair rates and to assure the people that taxation would not be resorted to, and it was therefore provided, not as the gentleman from Rockland now proposes, and the gentleman from Onondaga [Mr. Alvord] now agrees to—a vote of two thirds of the members elected to each house—but that it should be done with the concurrence of the Legislature. It will be observed, the gentleman from Rockland, not satisfied with the provision of the amendment of 1854—which is as follows: "The rates of toll on persons and property transported on the canals shall not be reduced below those for the year 1852, except by the canal board with the concurrence of the Legislature"—now asks that the Legislature should sanction the action of the canal board by a vote of two-thirds of the members elected to each house.

Mr. CONGER—Will the gentleman excuse me? I am perfectly willing to concede that the two-thirds vote shall be stricken out. My object in inserting it was merely to confirm the provision of the constitutional amendment of 1854. I do not desire to make the security of the public creditor any greater than it stood under that constitutional provision. I am not sure but if we establish this rule that the concurrence of the Legislature may fix a certain tax, it will require two-thirds of the Legislature to render the people subject to the tax. Still, I am willing to leave that out now.

Mr. VERPLANCE—That makes it very much better, and accomplishes not all I wished to effect by the amendment I proposed, but quite as much

as I hoped to effect when I proposed my amendment. The article as reported by the Canal Committee provides that the canal tolls should not be reduced below the rates fixed for 1867 until all the liabilities and debts of the canal are paid. The amendment of 1854 provided that the canal tolls should not be reduced without the concurrence of the Legislature, and as the gentleman from Rockland has changed his amendment, and asks only the concurrence of the Legislature, I shall get what I hoped in proposing my amendment. I am, therefore, obliged to the gentleman for changing the terms of his amendment. But I hoped for more. These five officers whom I have named, and who constitute this board—the Comptroller, the Treasurer, the Attorney General, the auditor, and the superintendent of public works—are perfectly competent to settle this question; and the concurrence of the Legislature is entirely unnecessary. If the Legislature should not act as recommended by this board, but contrary to their recommendation, it would probably be against the best interests of the State. I therefore hoped that the committee would adopt my amendment, and strike out the clause in relation to tolls, and leave the question where it was prior to the amendment of 1854, in the hands of the canal board.

Mr. CONGRER—This debate has gone far enough, I think, to satisfy the committee as to all that is sought to be obtained by inserting the provision which I have introduced by way of amendment, and which I now desire to modify. I wish the Secretary to strike out the provision for two-thirds vote, and to make it read, "except by the concurrence of the Legislature." My honorable friend from Erie [Mr. Verplanck] cannot fail to perceive that he is striking at a constitutional provision to which the faith of the people has been pledged for the security of the public creditor in the last canal loan that was effected, and that lying behind the other two debts. To strike that away, to leave out the clause which was in the constitutional amendment of 1854, would virtually impeach the credit of the State for the whole debt. I hope he is not ready to go as far as that. We must in good faith maintain the language of the constitutional amendment of 1854, and that is the whole object of my amendment.

Mr. PROSSER—There has been, perhaps, enough said on the subject. I only desire to correct a few remarks of the gentleman from Onondaga [Mr. Alvord], which may, perhaps have some influence upon members of this committee. One of those general remarks was, that a very large preference in price is accorded to the railway in the transportation of flour, as compared with the canal. He named the excess at twenty odd cents on the barrel. Having been somewhat familiar with this branch of traffic for many years, I can state to this committee that substantially, for the last ten years, every thing that has gone by the railway of any considerable amount eastward, except live stock, when the canal has been open, has gone substantially at the canal rates of freight. Such is the fact now, and has been through the fall. The freight upon flour which has come over the lakes and gone to the city of New York has been, for the last forty-five or

fifty days, eighty cents per barrel from Buffalo to New York by the railway, and scarcely, if at all, less by the canal. The rate of freight on wheat by canal has for some weeks past exceeded the rate of eighty cents per barrel on flour from Buffalo to the city of New York. Nor has there been this preference by the railway over the canal in the transportation of the heavier class of merchandise from the sea-board westward. It is not so now. On some few articles, sugar, molasses and coffee, the canal rates of freight are a few cents under the railway prices, a difference of five cents from New York to Buffalo. So that the railroads have not this great preference in price in the transportation of heavy articles at all, and never had. In an upward and active market for flour, oftentimes for a brief interval, a larger rate is paid by rail for celerity, but otherwise not, and has not been. Something has been said by that gentleman—I hardly think he intended it in an offensive sense, although it may have been so understood by some—with regard to the people of Buffalo coming down here to ask for improper reductions of toll year after year. So far as I recollect, what has been done in this regard for the last few years, and I have generally been here when there has been any thing said on that subject, for the last two or three years, there has been a deputation that sought to get the rate of toll on coal reduced a little from tide water to Buffalo, the boats needing it for ballast. Otherwise than that, for several years, if there has been a deputation from Buffalo here working to get a reduction of tolls, I have not known it. There may have been, but I have not known it. When we did come, we asked the canal board to consider how the business was increasing, which came down from the upper lakes, then through the Welland canal on to Lake Ontario, thence via Oswego and Albany, avoiding nearly one-half the Erie canal tolls, and to consider whether it was not wiser to reduce the tolls somewhat and get the trade the whole distance, rather than to keep it as it was and have the toll only for half the distance. The only argument that we made was that there should be a reduction in order to keep the trade in its natural channel. Next, was the reduction wise or unwise? It has been alleged here that the reduction which was made was very unwise, as shown by the report of the auditor of the canal department. Let us see about that. When these deductions were made, in addition to the reasons already stated, it was because the crop was small, and the volume of traffic small. In the year 1857 the crop was so small that scarcely a boat-load of grain left the city of Buffalo for the city of New York early in the season. The total tons from the Western States that year was less than a million. Could not all that million have gone upon the railroad? In the spring of that year the current rate of freight upon flour from Buffalo to the city of New York by railway was thirty cents a barrel. Was it the duty of the canal board to keep the rate of toll at twenty-five cents or twenty-three cents, and undertake to do business against thirty cents charged by rail? They were then, and are now, and always

have been in a condition with very little preparation to carry grain, and what could have prevented their taking what little there was in the spring and fall if they could have made money out of it? Nothing. They had the ability to take it all. In this state of things, the canal board made the reduction; and I take it that nobody in this hall or out of it, can show, that if the canal board had not made the reduction, the same tonnage, or any thing like the same, would have passed upon the canal. So, comparatively, was it the next year. The total tons from the Western States was little over a million. The rate of toll was kept down about where it was before, I think. Of course, the amount of tolls received was diminished in those years, as compared with previous years; but I deny that it was below what it would have been, if the rates had been kept up to what they were in former years, because the competition existed, and would have taken away a large portion of traffic that came over the canal in those years. It was far different when the toll was advanced in 1860. Then the volume was large, and the amount of transportation was large. That was a very good reason for advancing the toll then, and a very good reason why the tonnage did not fall off when the tolls were increased. It is not, therefore, in my judgment, proper for this Convention to draw any inference whatever adverse to the reduction of tolls from these circumstances; because there was so little to be done at all in the years 1857, 1858 and 1859. Would you do no business at all, because you cannot get two dollars per ton toll from Buffalo to the city of New York? No true business man would manage such a property in this way. A true business man would manage to obtain as large an amount of trade on the canals as he could under the circumstances from time to time. That, in my judgment, is the wisest course in dealing with these canals. If it were now in order, I would offer an amendment that I have drawn; but as it is not in order, I will read it as a part of my remarks. I would insert so as to read, "The commissioners of the canal fund shall fix the tolls in such manner as will produce the largest trade and revenue, and so far as practicable, to prevent a diversion of business out of the State, until the entire debts chargeable upon the tolls under the existing Constitution, shall have been paid, or provided for." This would command the commissioners of the canal fund, to see to it, that they made no unwise reduction, but handled this great canal property as they would if it were their own. And the people of this State, make a very foolish and unwise selection, if they do not select men for that position, who are capable of taking good and proper care of this matter of tolls. It would be much wiser to leave this subject to the commissioners, without consulting the Legislature, striking out what my colleague from Erie [Mr. Verplaack], proposes to strike out. I believe there has never been an application by this canal board to the Legislature to reduce the toll, but has agreed to precisely as requested. I think it is a needless formality, which it would be better not to put into the Constitution.

The question was put upon the amendment offered by Mr. Conger, to add the words "except with the concurrence of the Legislature," and it was declared carried.

The question recurred upon the motion of Mr. Vorplauck to strike out, and the vote was partly taken.

Mr. VERPLANCK—I do not think members can understand this question. My amendment places the power over tolls precisely where it was before the amendment of 1854. I trust that the gentleman who put this clause into the report of the Canal Committee will consent to strike it out, as the reason for its insertion failed when the Convention refused to adopt the recommendation of the committee to raise a loan for the immediate improvement of the canals. If the amendment is rejected, the restriction should continue only until the "canal debt" proper, as recognized by this Convention, is paid.

The section was read for information.

The question was put upon the amendment, and it was declared lost.

Mr. ALVORD—It becomes necessary from the change which has been made by the action upon the joint articles on canals and on finances, that there shall be another amendment. I propose to strike out from this section the words "recognized by section 2 of the article on finance."

Mr. PROSSER—I suggest to the gentleman a modification in this way: "recognized by this Constitution."

Mr. ALVORD—I have no objection. I think the proposition is very well. I have no objections to that alteration.

Mr. VERPLANCK—Certainly no friend of the canals wants to put it in that shape. I believe the Convention refused to strike out as I proposed after the amendment of the gentleman from Rockland [Mr. Conger], because the amendment of 1852 pledged the canal revenues to the payment of this loan that was to be made. It is now proposed to make this applicable to the \$18,800,000. All the Convention desires to do, is to retain this power in this shape until the canal creditors of the State shall be paid. Therefore the amendment proposed by the gentleman from Onondaga [Mr. Alvord] is the proper amendment.

Mr. ALVORD—It has not been acted upon. I will still further modify it by providing for the liabilities of the debt known as the canal debt of this Constitution.

Mr. VERPLANCK—That is right, I do not call the \$18,800,000 a canal debt, as it is represented by no creditor. I do not want this article to apply to that debt.

Mr. ALVORD—I would strike out all of the tenth line down to the word "article," and insert "until the canal debt (so-called) shall be paid."

Mr. GRAVES—I would inquire how the article will read as it is proposed to be amended?

Mr. ALVORD—It will read that they shall not lower the rates of tolls on the canals, without the concurrence of the Legislature, below the rates of the year 1867, until the canal debt, so called, shall have been paid or provided for. If gentlemen will refer to the Convention document No.

129 they will find that section 1 goes on and enumerates the \$3,258,000, the \$5,642,030, the general fund debt and the enlargement debt, calling it as the canal debt, and leaving out the \$18,000,000 entirely.

Mr. GRAVES—As I now understand the amendment, it proposes to give power to the Legislature to increase or reduce the rates of tolls on the canals as they see fit.

Mr. ALVORD—It gives power to the Legislature to concur in the action of the canal board in a reduction. The canal board cannot reduce without the consent of the Legislature.

Mr. CONGER—It hardly seems fair that the word "liability" should be stricken out, because the faith of the State is just as much pledged to the repayment into the treasury, or to that sinking fund known as the general fund sinking fund, the amount which has been heretofore advanced by taxation.

Mr. ALVORD—I have understood by the permanent vote of this Convention, that it should have been postponed beyond and outside of the power on the part of the Legislature to appropriate the surplus revenues of the canals to the improvement of the canals.

Mr. CONGER—That may all be; but do you mean to say that you will leave it in the hands of the canal board, without the concurrence of the Legislature, to reduce the rates of tolls after the canal debt is paid; leave it in the breasts of the canal board to say whether any amount shall ever go back to the general fund, for the purpose of the repayment of moneys advanced by taxation? That is the difficulty. We can get the consent of the Legislature, if the gentleman allows the phrase to stand as it was, including debts and liabilities, if necessary, to reduce the tolls at any given period after the canal debt is paid. But in the language which he now proposes to use by way of amendment, the Legislature would not have a word to say after the canal debt was paid without a reduction of the toll. It would then be left entirely in the breast of the canal board. I think it is best to give the Legislature concurrent jurisdiction all through. I therefore move to re-insert "liabilities."

The CHAIRMAN—It has not yet been stricken out.

Mr. M. I. TOWNSEND—I hope the amendment of the gentleman from Onondaga [Mr. Alvord], to insert the words "canal debt, so-called," will not be adopted. I have, so far as I have been called upon to act in this Convention, desired to do every thing which could be reasonably done to promote the interest of the canals of the State as a system; and I am entirely satisfied that the action of the Convention upon that subject has been wise. I am satisfied that the canals of the State are a very great and a very important interest. But, sir, I am sorry that those who are most affected by the action of the State, favorable to the canals, feel called upon here to secure the easiest possible mode of reducing their income at the earliest moment that it can be done. Now, it may be wise, when this canal debt shall be paid, to reduce the tolls upon the canals to the minimum; but if it shall be wise, will not the Legislature of that

day do it? Is it putting an intolerable burden upon the canals and the canal interest to leave it to the representatives of the people of this State to say when, and how much, and how far, the tolls shall be reduced? For myself, feeling as I do in regard to these canals, I believe it is for the best interests of the canal system of this State that they should be productive, that they should be a source of revenue to the State, to the end that the people of the State may feel that they have not a pauper upon their hands; that the canals are a productive interest; that the canals are aiding them to bear their other burdens, and thus that the people of the State shall ever be ready to act with those who are most anxious to increase the extent of the influence of this means of transportation. Now, I believe that if we should put in this prohibition these tolls should never be reduced below the amount charged the present year, we should be doing a good act toward the canals and toward those who are interested in them. Why, the canal tolls are the merest bagatelle in the world to the producer. It is the conveniences which the canals furnish to the people of the State, and those who do business upon them that renders the canals valuable. The mere burden of toll is nothing to the business man who has their use. The tolls make a great sum in the aggregate; but the number of men, the amount of business that it accommodates is still greater, immensely, enormously greater, and in the aggregate, the burden rests lightly. It is a mere nothing. As you gather the little drops, one by one, they become eventually a fountain. Now, if it shall be wise, after the canal debt is paid, to reduce the tolls, it would be perfectly safe to leave it to legislative action. For that reason I hope the amendment of the gentleman from Onondaga [Mr. Alvord] will not prevail. I say to the gentlemen from the western part of the State, and my friend from Buffalo [Mr. Verplanck] that if they wish the people of this State to sanction the action of this body, they ought not to throw any doubt around the sincerity—I will not say sincerity—they ought not to throw any doubt around the possibility of the whole matter being left directly to the control of the agents of the people so long as this Constitution shall stand.

The question was put on the amendment of Mr. Alvord, and, on a division, it was declared lost.

The question recurred on the adoption of the section.

Mr. E. A. BROWN—I notice the first part of this section appoints the Comptroller, the Treasurer, and the Attorney-General as the commissioners of the canal fund. I move to amend that part of the section after the word "the" in the first line, by inserting the words "Lieutenant-Governor and Secretary of State," which will constitute the commissioners of the canal fund of the same officers that it is now composed of. This provision provides for the duties of the commissioners of the canal fund. They shall have power to appoint and remove all officers who shall be intrusted with the collection and safe-keeping of revenues derived from tolls on the canals of this State, etc. I do not know what reason there may be for

striking out these two officers, the Lieutenant-Governor and Secretary of State. It strikes me the discharge of the high duties imposed by this section make it eminently proper that the Lieutenant-Governor and Secretary of State should be members of the board. The Lieutenant-Governor is the second officer in the State; he is not burdened with official duties; he has time and opportunity and leisure to discharge the duties imposed by this section and by the laws of the State. I say it strikes me it is eminently proper that this officer should be retained as a commissioner of the canal fund, to co-operate with the other officers named in the discharge of the important duties imposed upon those commissioners. And so in regard to the Secretary of State. It seems to me he should be included, also. The number of officers constituting the board will not make it objectionable on that ground. Public confidence will be increased if these officers constitute the board. I have said all I design to say about the proposed amendment.

Mr. ALVORD—So far as it regards the duties of these officers in the custody of the money of the State, as commissioners of the canal fund, the reason why the committee were in favor of thus restricting the number was because that, in practice in the past, almost the entire of the business required to be done by the commissioners of the canal fund was virtually done by a subordinate officer, and the accumulation of business of the utmost importance was actually attended to by a subordinate officer, whose action was subsequently made technically correct by the happening together of a sufficient number of the commissioners of the canal fund, who put it *rectus in curia*. The Lieutenant-Governor is absent most of the time, so is the Secretary of State. The Lieutenant-Governor is only at the Capital at the beginning of and during the session of the Legislature. If he is here to attend to the duties of this board, it is for that special purpose, and for a few hours at a time, at a very considerable expense to the State. This business has uniformly been done by the financial officer of the canal department, in anticipation that it would be approved by the commissioners of the canal fund. So with the Secretary of State; he is seldom, if ever, here, except during the session of the Legislature. He is not here during the business season of the year. So that, virtually, as I said before, the business is done by a subordinate officer, whose action must be approved thereafter by the commissioners. The idea of the committee was that the Comptroller was the financial officer of the government; the Treasurer was the custodian directly of the moneys of the government; the Attorney-General was the law-officer of the government. Each and every one of them was directly interested officially in the care and protection of the revenues of the State; the financial measures would have their sanction and approval, and the business would not be left as in the past, at loose ends, to be done by a subordinate officer, and the happening together of a sufficient number of the commissioners to approve his acts. That was the reason why the Canal Committee concluded that

they would be concentrating the responsibility and securing the proper officers, if they omitted the two officers who have heretofore been commissioners of the canal fund. So far as regards this matter, I have no feeling except the desire to make the State entirely secure in reference to the transaction of its official business. I hold as a cardinal principle that when we elect men to official position and place upon them certain duties to perform, that they should not by indirection in any way devolve that duty upon others, upon inferior officers, but that they should perform those duties themselves. It was with the purpose of assuring the people of the State that so far as regarded this high official duty upon the part of the officers of the government, it should be correctly performed, that they reduced the number, in order that there should be a quorum at all times, and in order that there should be some responsibility, that it would be done correctly. So far as the canal debt is concerned I have no anxiety; the alterations have been made for the purpose I have mentioned.

Mr. E. A. BROWN—If it is true, as the honorable gentleman states, that these two officers more than other officers, have been negligent of their duty, that does not seem to me to be a sufficient reason for constituting this board of three instead of five officers.

Mr. VERPLANCK—This board now is composed, by this article, of five officers—not of three.

Mr. E. A. BROWN—Now, sir, I insist that for the purposes of the discharge of all the duties indicated in this article, the Lieutenant-Governor is as important an officer as any other, and ought to be as competent as any other officer; and if he is willing to be elected Lieutenant-Governor he ought to be willing to discharge the duties imposed upon him. Certainly there is no excuse why he should fail in the discharge of those duties, and his presence in the discharge of the duties imposed by this section is as necessary to the public interest as that of the Treasurer, or the Comptroller, and more so. The Comptroller has the immediate custody of the funds; the Lieutenant-Governor has not that custody, but he certainly should be a very competent person to see whether the duties of the Comptroller are properly discharged or not, and to co-operate with him in all that pertains to the duties of the commissioners of the canal fund. That he neglects his duty is certainly no reason why it should be left out; the remedy is to elect somebody that is more competent and more faithful; and so with the Secretary of State. I do not know but the Attorney-General is as much absent from the city of Albany, the capital of the State, during the year, as any other officer. I think the public interests connected with the subject require the services of all these officers, and if they fail in the discharge of their duties let us endeavor to make such provisions as will compel them to be more faithful.

The question was put on the amendment offered by Mr. E. A. Brown, and it was declared lost.

Mr. E. A. BROWN—I now offer a further amendment. I move to strike out, in line 7, the words, "superintendent of public works."

I do not know that it is to be determined ultimately that that portion of the report of the committee is to be adopted which provides for a superintendent of public works, in place of certain other officers now existing. If that should be adopted, of course it is proper in its present place; but if we adopt that provision for a superintendent of public works, why then we can insert it when we come to that section.

The CHAIRMAN—Does the Chair understand the gentleman to press his motion?

Mr. CONGER—I understand the gentleman to ask that the amendment shall lie over until we reach the discussion of that change in the Constitution.

Mr. BICKFORD—The gentleman had better withdraw it, as it might be embarrassing as a pending amendment.

The CHAIRMAN—The Chair does not understand that a motion can lie over in a Committee of the Whole; it must be either pending, or decided, or withdrawn.

Mr. ALVORD—Let me suggest to the gentleman from Lewis [Mr. E. A. Brown] that when amendments generally are in order, his amendment will be in order.

Mr. E. A. BROWN—I withdraw the motion.

Mr. BICKFORD—I move to strike out the words "until the canal debt, so-called, shall be paid," or the words equivalent to these, whatever they are.

Mr. ALVORD—I rise to a point of order. That has been put in by amendment, and therefore it cannot be stricken out.

Mr. BICKFORD—The amendment included that and something more.

The CHAIRMAN—The Chair is informed by the Secretary that the words which the gentleman moves to strike out were put in as an amendment.

Mr. BICKFORD—They were put in with something more, and that makes it an entirely different proposition.

The CHAIRMAN—The Chair does not know of his own knowledge, and the Secretary informs him that these words were put in as an independent motion.

Mr. BICKFORD—The Secretary will recollect when I recite the fact. It was put in with the other provision, that it should not be done until the Legislature should concur.

Mr. HALE—I understand the fact to be this: The gentleman from Rockland [Mr. Conger] first moved an amendment by which words were inserted, and his amendment was carried, inserting the words "except with the concurrence of the Legislature." After the adoption of that amendment, the gentleman from Onondaga [Mr. Alvord] moved to strike out a portion of the tenth line and insert the words "until the canal debt, so-called shall be paid," and that was carried.

The CHAIRMAN—Then the motion of the gentleman from Jefferson [Mr. Bickford] would not be in order.

Mr. BICKFORD—The words stricken out were "until all liabilities and debts recognized by this article," and instead of that these words, "the canal debt," were inserted. Now, I move to strike out the words that were then inserted and

to leave nothing in their place. Is that the same proposition that has been passed upon already? I think not, sir; it is very different. I propose to strike out that provision and to leave its place entirely blank, so as to say that these persons in charge of the canals shall never reduce the tolls until the Legislature shall consent. That is my idea, and that has not been passed upon by this committee before.

The CHAIRMAN—The Chair must still hold to its decision, as it is informed by the Secretary and by the gentleman occupying the chair at the time, that the words moved to be stricken out were inserted by an independent motion.

Mr. BICKFORD—They were inserted in lieu of something else that was stricken out; but my proposition is to leave the place blank, and it is a new proposition.

The CHAIRMAN—The Chair may rule that the motion is not in order, for the words were inserted in the place of others that were stricken out; and while they were inserted by vote of the committee, and until that vote is reconsidered, no motion to strike out these words will be in order.

The SECRETARY read the second section, as follows:

Sec. 2. The Governor shall nominate and, with the consent of the Senate, appoint an auditor of the canal department, who shall hold his office during the term of five years, at a salary to be fixed by law; and he shall have such powers and perform such duties as now are or may hereafter be prescribed by law and not inconsistent with this article. He may be suspended from office by the commissioners of the canal fund, for incompetency, neglect of duty or malfeasance in office, and removed by the Governor on their recommendation; but no such suspension or removal shall be made unless he shall have been previously served with a copy of the charges preferred against him, and shall have had an opportunity to be heard in his defense. In case of the suspension or removal of the auditor of the canal department under this section, or his vacation of the office for any cause during a recess of the Senate, the Governor, upon the recommendation of the commissioners of the canal fund, may appoint a proper person to act as such officer during such suspension, or to fill the vacancy occasioned by such removal or vacation of office, and the person so appointed shall hold such office no longer than the duration of the session of the Senate succeeding such appointment.

Mr. VERPLANCK—I move to amend the sixth line by striking out the word "article" and inserting "Constitution." It will be remembered that yesterday we provided that no money should be paid except upon the warrants of the Comptroller. Under the present laws the auditor is authorized to pay the indebtedness arising in reference to canal matters. Now, this article leaves him such powers as he now has, and such as may hereafter be conferred by the Legislature, "not inconsistent with this article." I simply want to make it read, "not inconsistent with this Constitution."

The question was put on the amendment of Mr. Verplanck and it was declared carried.

Mr. AXTELL—I move that this section be stricken out. I do not understand what reasons may have influenced the committee in reporting this section, but it appears to me that it is not necessary to put it in the Constitution. The canal auditor is a creature of law, and I can see no reason why he should not continue to be a creature of law, instead of being made an officer of the Constitution. I therefore trust that this section will be stricken out. There may be very important reasons why this officer should not be created directly by the Constitution.

Mr. ALVORD—If I could meet the argument of the gentleman upon the proposition that no such officer was necessary, that would be one thing; but meeting him upon the proposition that he now makes, I shall simply answer this. One of the great troubles and difficulties in this State in its past history has been a virtual, though possibly not a letter, violation of the Constitution of 1846, by the creation of officials independent in their action, by the action of the Legislature, and I trust that before we get through with this Constitution there will be a provision in it taking away from the Legislature all power to create a public officer irresponsible to the public officers known to the Constitution. By the creation of these officers unknown to the Constitution responsibility has been divided and frittered away; and this officer, the auditor of the canal department, is one of them. In many respects this office is a good one, and if I had had my way in the committee I should have made it a bureau in the Comptroller's office, concentrating the entire responsibility, in all matters connected with the canals, in the financial officer of the State. My colleagues on the committee desired to create this office, and I gave way to them; but I wish to make it a constitutional, not a legislative, office. Another thing. The insurance department was, under the Constitution of 1846, a bureau in the Comptroller's office, but to-day it is an independent office created by legislative action. So, too, with the office of superintendent of public instruction, which was formerly one of the bureaus of the Secretary of State's office. These officers have been created by legislative power, and the responsibility has been thereby divided, so that it does not rest anywhere under the present arrangement, which I say is in violation of the spirit, if not exact letter, of the Constitution of 1846. If this be retained as an independent office in any regard, I trust it will be made so by the Constitution, and not by legislative action.

Mr. AXTELL—For the very reason that I object to its being retained as an independent office, I move to strike this out, and I think the action of the committee yesterday in regard to public moneys has removed from the auditor of the canal department much of the power that he now exercises in relation to the public moneys. The auditor of the canal department exercises more irresponsible power in relation to these moneys than any other officer in the State. He exercises to a certain extent uncontrolled power over the public moneys of the canal department. I object to that. I think the responsibility should not be thus divided. We have a State Treasurer who is nominally custodian of all the funds of the

State, and yet that large portion of the State funds that is connected with the canals never really comes under his control. Before the passage of chapter 162 of the Laws of 1843, the money of the canal fund was under the control of the canal fund commissioners. That act made the auditor an independent officer, and vested in him all the power formerly exercised by the Comptroller in relation to the canal funds. Under the provision of that act, section 11, the moneys formerly controlled by the canal fund commissioners were transferred to the custody of the Treasurer, and were to be paid out on the warrant of the auditor. Before this the auditor simply acted as clerk of the canal fund commissioners. By this act the canal funds were placed in the custody of the Treasurer, the same as the other funds of the State. But how is it practically? In the case of funds drawn for by the Comptroller, the warrant of that officer is accompanied by vouchers, and states the purpose for which the money is drawn. The warrant is presented in person by the party to whom the money is to be paid, and the Treasurer draws his check and gives it to the party. But in the case of money paid out of the canal fund, the auditor's warrant is presented by his clerk, unaccompanied by any voucher and with no explanation whatever as to the object for which it is drawn. The party for whom the check is drawn simply gives a receipt, and the Treasurer has no knowledge whatever of the purpose to which the money is to be applied. The checks are taken by the auditor's clerk, and they are seen no more by the Treasurer, as the bank books and the returned checks are retained by the auditor. As regards moneys paid into the canal fund, although the Treasurer is ostensibly the custodian of them, under the rule he knows nothing of them except from the certificate of the auditor. The canal tolls are deposited in sundry banks along the line of the canal, selected by the canal fund commissioners. These banks make all their statements or returns to the auditor, who certifies to the Treasurer the amount to his credit in the several banks.

Mr. ALVORD—Do I understand the gentleman to say that those moneys are deposited in the banks to the credit of the Treasurer?

Mr. AXTELL—To the credit of the Treasurer. Four banks in Albany are selected as disbursing banks. To these banks the moneys in the deposit banks along the line are transferred nominally by a resolution of the canal fund commissioners, but the practice generally has been to transfer them by the auditor himself. Other moneys than the canal tolls are paid to the auditor personally, who certifies to the Treasurer that he has deposited to the Treasurer's credit in one of the disbursing banks the amount named, for which the Treasurer gives a receipt, though he has no actual knowledge of it except from the certificate of the auditor; nor has he any means of knowing that the money is so deposited, as the bank books are never seen by him. Thus it will be seen that, in the practical working of this arrangement, there is really a usurpation of power on the part of the auditor, or, if not that, the exercise of irresponsible power, and that while the Treasurer is legally responsible, the auditor is the actual treasurer of

the canal fund. The Treasurer's report in regard to all other funds of the State is given in detail, covering many pages, but in relation to the canal fund, one line embraces all the information he is able to give. "Payments on the warrants of the auditor." Now, what I propose, and it is also contemplated, as I understand, by the action of the committee yesterday, in regard to public moneys drawn by warrant of the Comptroller—what I propose is, that the auditor's department shall be simply a bureau in the department of the Comptroller, and that there shall not be this divided responsibility in regard to the public moneys, and especially that the auditor shall not be really the treasurer of the canal fund, while we have an officer who is ostensibly the treasurer of all the moneys of the State.

Mr. ALVORD—The gentleman has brought out in bold relief what I stated in general terms upon another branch of this subject, that virtually, under the past arrangement, the commissioners of the canal fund only acquiesced in what was done by an inferior officer. That arrangement has been voided entirely, as I supposed it would be, by the action of the committee and of this Convention yesterday, in putting the sole right and power into the hands of the Comptroller, to speak for the State in the disbursement of moneys—so that, so far as that is concerned, if this Constitution is adopted by the people, there is a complete prohibition of the auditor's touching the public money or having any thing to do with it. Now, the argument used by those who are in favor of the retention of this officer is, that as a matter of necessity, under existing laws, we must have a clerk, or a confidential clerk, if I may so speak, of the canal commissioners and of the canal board; and that that person must necessarily be one who is acquainted with all the details of the canals, both so far as regards their working operations and the statistics of their business, and therefore he will be more competent than any one else to speak affirmatively in regard to what should be done upon the line of the canal, in respect to the adjustment of tolls and the selection of the necessary sub-officers for the collecting of the tolls on the canals; and that we could get his services by calling him a public officer, recognized by the Constitution in the capacity of an adviser in the regulation of the tolls, while at the same time we would provide that, so far as regards the disbursement of money, it should only be done on the warrant of the Comptroller. The practice as stated by the gentleman from Clinton [Mr. Axtell] has been this: The commissioners of the canal fund are the custodians, under the law and the Constitution, of the canal revenues, and are the disbursing agents of the State of the moneys that come into their hands; but the practice under the law as it exists now has been for the auditor to do the entire of this business. In the first place, he is given the official right by the Legislature (I say in violation of the Constitution) to draw directly upon the treasury as the canal financial officer; in the next place, he does the whole of this work, the transferring from one bank to another, and waits for a convenient meeting of the canal fund commissioners, after he has laid his proceedings before

them, to get them to sanction his doings; so that virtually he has the entire financial control of the canals. For one, I do not desire that he should continue to have that control; it should be where we put it yesterday, in the hands of the Comptroller; but for the purpose of giving us the benefit of a position which must necessarily give a large amount of information in regard to the tolls and the canals generally, to the person who holds it, we propose to continue this office.

Mr. CONGER—I think it is much to be regretted that the counsel of the gentleman from Onondaga [Mr. Alvord], in regard to this office, did not prevail in his committee. He yesterday took away from the auditor the only power for which this office was ever created, which was the power of disbursing money and drawing checks on the treasury whether there was money there or not, for the purpose of carrying out what was called the improvement of the canals. Those who remember the discussion in the early part of the Convention when information was sought by my associate from Westchester [Mr. Greeley] as to what had been done with the moneys of the canals, will remember that some little time was spent in tracing the origin of this auditor's office, and it was clearly shown that the commissioners of the canal fund had been deprived by act of the Legislature of all the power it was possible to take from them without destroying their office as a constitutional office, and that power was given to the auditor. There was a reason for this, which gentlemen familiar with the legislation of that time understand so well that it is not necessary for me to state it here, but I would say, without any hesitation, that the only real object for which that office was ever created was to have some one who was willing to draw checks on the treasury for moneys to be expended in the enlargement of the canal, and in a way which the commissioners of the canal fund had refused to approve; so that we had a clerk of this board of constitutional officers, clothed with an almost unlimited control over the funds of the canals, and permitted to draw money from the treasury as he saw fit, without the necessity of any consultation with his principals. Now, sir, we have taken away, by our vote of yesterday, from the auditor, that power. Now, what is there left of his office? We have refused to go on with the further enlargement of the canals, so that there will be no effort in the future to squander money in that direction. What then is there left of the auditor's functions? He is merely the clerk of the commissioners of the canal fund. I think it would be very unwise to make a clerk a constitutional officer; we cannot do so without clothing him with definite powers, and I think we had better place that power with the constitutional officers, elected by the people, and constitute the commissioners of the canal fund the board who is to advise and do the work which the auditor's office has heretofore usurped, and which now he would hold in a mockery of power, because he would have no control whatever over the finances of the canals. I think it is wise, now, more especially if we seek to remodel the whole system of canal management, to put this officer back where he was. If we are going to send all the funds of the canals into the Comptrol-

ler's office, why should we not send the man who has to keep the accounts back there, and make him what he was originally, a clerk in the Comptroller's department? If the Convention should undertake, in the remodeling of the canal management, to break up some of the old boards and confer extraordinary powers on the superintendent of public works, is it not easily to be seen, that there is danger of a conflict between that superintendent and the auditor, especially if the auditor is made a constitutional officer? I think every consideration prompts us at this time to concur in the judgment which was expressed so frankly by the honorable gentleman from Onondaga [Mr. Alvord], in his committee, which judgment was overruled, no doubt, in view of the general policy of the Committee on Canals and as that has failed I cannot see how it is possible for the Convention to avoid going back and restoring the auditor's office to its original position. I certainly hope the proposition of the gentleman from Clinton [Mr. Axtell] will prevail.

Mr. S. TOWNSEND—I wish merely to say, sir, that I hope the motion of the gentleman from Clinton [Mr. Axtell] will prevail. I think after the exposition we have had here, of the manner in which this office was created, and of the iniquity of the thing, as presented in that lucid but brief statement, that this motion now presents an opportunity to the Convention, which they will gladly embrace, to abolish the office, and almost abolish the name. Again, sir, the Convention in doing so, will be acting consistently with what heretofore they have done, in extinguishing several of the unnecessary offices of the State. We came together with that idea, in part, and I shall most cheerfully concur in that, by giving my vote in favor of this motion. I was going to say further, sir, that if we undertake, as I hope we shall, to remodel the whole fiscal management of the canals, I hope that some gentleman more conversant with such matters than myself (perhaps the gentleman from Erie [Mr. Prosser] can do it, as I understand he has been engaged in the business for years) will state to the Convention whether it is not possible that greater simplification may be secured in the management of the tolls. Perhaps it might be done by a license system; by saying to each boat, at the beginning of the year, "Here, take this license, make your freight what you please, and take what you please." This would relieve greatly, in the matter of details, the officers charged with the duty of the arrangement of the tolls and the custody of the money. Again, as to the custody of the money, we had a very clear statement of how the receivers along the line of the canals reported to the auditor that they had certain funds. He reports to the Treasurer that certain funds are to his credit deposited in different banks. That system might be changed. The only currency which is receivable now throughout the United States is gold and silver; not at its proper rate, I am sorry to say, and the secured circulation of certain institutions organized by virtue of a law of the United States. It is perfectly competent for the Comptroller to direct what class of securities, other than gold and silver, shall be received

for tolls, and the moment those securities are received, by the facilities of these express companies, who add to their promptness great responsibility, these actual moneys might be transmitted to the Treasurer. Then, gentlemen may ask, What will the Treasurer do with it? It would be a mere clerical duty to take a record of these notes, and say to those banks whose notes he has received: "Gentlemen, your pledges are in my hands for such an amount of thousands of dollars. I do not need, for the service of the State, to use this money for five or six months; what arrangement will you make with me, for allowing me a portion of the legal interest which you get, if I retain this money from circulation in my vaults?" As I said yesterday, many things have been going on well, or tolerably well, in our canal matters, and the people have accepted them; but that is not to say but what a great improvement could be made in the management, and on this subject I think that one, and a very great improvement, could be made, and a great security to the public and a saving of money, by reducing the number of appointive and elective officers, and limiting the wide and scattered power of a vast number of officers holding responsibility, through the Constitution, to the Legislature, and through the Legislature, to the immediate people.

The question was put on the motion of Mr. Axtell, and, on a division, the vote was 29 to 35.

SEVERAL DELEGATES—No quorum voting.

The question was again put, and the vote was 37 to 41.

The CHAIRMAN—The Chair is of the opinion there is a quorum in the house if gentlemen will vote. The Sergeant-at-Arms will call in members from the lobbies.

Mr. PROSSER—Meanwhile, I wish to make a few remarks. The gentleman from Rockland [Mr. Conger] said that the action of this Convention, yesterday, took away from the auditor the power to draw warrants upon the treasury, and left substantially nothing of the duties of this officer. I do not so understand the duties of this officer as now prescribed by law; surely such are not his appointive duties; nor are such the duties he has performed until now. This officer has kept the entire accounts of the canals for a long series of years, and has been the clerk of the commissioners of the canal fund for a long time, ever since the establishment of his office, I believe. In short, he presided over this branch of the business of the State, which has taken entire charge of the canals, and I think properly so. But I have no objection to the Comptroller performing his duties, if the Comptroller has the physical ability to perform them as well as this officer selected expressly to perform them. But my objection to striking out this section is that the Comptroller has duties in abundance; it is a very arduous office as it is now bereft of the duties now prescribed by law to the auditor, and as hitherto performed, and I believe well performed, in the main. So I think it is wiser to retain this section as it is. I have no objection to the action of yesterday, making the Comptroller the only officer who shall be authorized to draw funds from the treasury; but if you add to the duties

of that officer all the duties of canal management, I think it will be a great mistake, for I think the public will be better served by an officer who has nothing else to do than to look after the canals as hitherto, than it could be by the Comptroller with all his other duties.

The question was again put on the motion of Mr. Axtell to strike out the section, and was declared lost, on a division, by a vote of 38 to 48.

No further amendments being offered to the second amendment, the SECRETARY proceeded to read the third section, as follows:

SEC. 3. The Governor shall nominate to the Senate, and with its consent, shall appoint a superintendent of public works, who shall hold office for eight years, and whose salary shall be determined by the Legislature. He shall be vested with the control of all matters relating to the repairs and keeping in navigable order of the canals, and of any improvement that may be authorized by law, and of the rules and government of their navigation. He may be suspended from office and removed by the Governor, on the recommendation of the commissioners of the canal fund, for incompetency, neglect of duty, or malfeasance in office; but no such removal shall be made unless he shall have been previously served with a copy of the charges preferred against him, and shall have had an opportunity of being heard in his defense. In case of the suspension, removal from office, vacation, or inability to serve, from any cause, the superintendent of public works, during the recess of the Senate, the senior assistant superintendent of public works shall act in his place and stead; but not for a period beyond the end of the session of the Senate next after such suspension, removal, vacation, or inability to serve. The Governor, upon the recommendation of the superintendent of public works, may nominate, and with the consent of the Senate, appoint four assistant superintendents of public works, who shall hold their office eight years, at an annual salary to be fixed by law; the said assistant superintendents shall be subject to the authority and control of the superintendent of public works, and may be removed by him for cause; all other officers and employees necessary for the care and management of the canals, other than financial officers, may be appointed by the superintendent of public works, subject to removal by him, and he may have such other powers and duties, not inconsistent with this article, as may be prescribed by law.

Mr. BERGEN—I move to substitute for this section the third section, as reported by a minority of the committee, as printed in document No. 86, and signed by myself and Mr. Seymour. The minority of the committee agreed with the majority to change the plan of management of the canals so as to leave the whole matter in the hands of the superintendent, but they differed in opinion with them in relation to the manner in which this superintendent should be appointed. For one, I am in favor of his election by the people, instead of being appointed by the Governor and Senate, as provided in the majority report. If the people are competent to elect a Governor, the highest officer of the State, and to elect a Senate, I hold that they are also competent to

elect this officer, who is to have the sole charge and management of the canals. I have not as yet arrived at the opinion that the people are incompetent for self-government. I believe they are competent to govern themselves and to select their own officers and the persons to manage their affairs. We have seen appointments made by the Governor and Senate of canal officers, but if I mistake not, the result of the investigation of a committee of the Senate to examine into the action of the canal officers, shows that the appointees of the Governor and Senate were as corrupt, or more corrupt, than any of the canal commissioners who have been elected by the people. Our experience, so far as our canals are concerned, as I understand the matter, has been in favor of election and against appointment. We know very well that the Governor and Senate will be influenced, and have been influenced in their appointments, by political considerations. I admit that Conventions, in nominating officers, are influenced by the same considerations. I do not wish to say that one manner, in that respect, has preference over the other; but this I do know: that when officers are nominated by a convention every man in this State has an opportunity to pass his judgment upon the matter and to approve or reject them; but when appointed by the Governor and Senate that is not the case; if they make a poor selection the people have no chance to act upon it, except indirectly in the selection of a Governor. I am in favor of giving the people a chance to act directly upon the selection of these important officers. I believe that to be in accordance with the theory of our government, and I believe that theory to be sound. For that reason and others, I hope that the amendment I have offered may be adopted.

The SECRETARY proceeded to read the substitute as proposed by Mr. Bergen, as follows:

SEC. 3. There shall be a superintendent of public works, who shall be elected by the people at the next election after the adoption of this Constitution, and at the election in every eighth year thereafter, and he shall hold his office for eight years from the first day of January next after his election, and shall receive such salary as the Legislature shall prescribe. He shall be vested with the control of all matters relating to repairing the canals and keeping them in navigable order, and to such improvements and enlargements of the same as shall be authorized by law, not inconsistent with this Constitution; and he shall make such rules and regulations as are necessary for the navigation of the canals. He may be suspended or removed from office by the Governor, on the recommendation of the commissioners of the canal fund, for incompetency, neglect of duty, or malfeasance in office, but no such removal shall be made unless he shall have been previously served with a copy of the charges preferred against him, and he shall have had an opportunity to be heard in his defense.

In case of the suspension or removal from office of the superintendent of public works, or the vacation of his office for any cause, the Governor shall appoint one of the assistant superintendents, who shall be vested with the powers and shall perform the duties of the superintendent of public

works until such suspension shall cease or a successor shall have been elected and qualified.

Whenever the superintendent of public works shall be removed from office as herein provided, or his office shall become vacant for any cause, a successor shall be elected at the next general election, who shall hold the office for the unexpired term thereof.

The superintendent of public works shall appoint four assistant superintendents and all other officers necessary in the discharge of his duties, except the officers mentioned in the first section of this article. The officers appointed by the superintendent of public works shall have such other powers and shall perform such other duties as shall be prescribed by law not inconsistent with this Constitution.

Until the election of a superintendent of public works as herein provided, the canals of this State shall remain in charge of the officers now in charge of the same, whose powers and duties in relation thereto shall be continued until such superintendent shall enter upon the duties of his office.

Mr. ALVORD—Gentlemen will perceive, by putting these two together, that there is another difference between them, other than has been suggested by the gentleman from Kings [Mr. Bergen]. In the case of the original section, the deputy superintendents are also appointed by the Governor and Senate; in the section now under consideration by way of amendment, these assistant superintendents are appointed by the superintendent proper himself. There is that difference in addition to the difference in reference to the mode of selection. I do not propose, sir, inasmuch as this question has incidentally been very largely debated upon the floor of this Convention, to enter into any very extended argument in reference to whether officers should be elected by the people or appointed by the Governor and Senate, but shall simply give my approval to the reasons which operated upon the minds of the majority of the Committee on Canals in proposing this method for the selection of these officers. I will premise my remarks by saying that, so far as it regards the officers of the canals in this State, whose conduct has been under revision for the last few months, that I stand here neither as accuser nor defender; but I wish gentlemen to reflect that so far as it regards that investigation, it has, to a certain extent, at least, been *ex parte*; and there may be, possibly, in very many of the instances which have been cited as evidences of corruption, another statement of affairs to come out hereafter. But let that be as it may, it is none the less certain that if all which is claimed by those who made that investigation, may be true, with regard to the corruption which obtains, as well in the case of parties elected by the people as those appointed by the Governor and Senate, that in that respect there is no difference. But, sir, we know perfectly well that the operation in our nominating conventions of both political parties, is that the selection of men for nomination is not the direct opinion and voice of the people, and that if the people could meet together in convention to select their candidates for office for each party, in very many instances, at least, the selection made by the dele-

gated authority of the people would not be the selections made. Here the superintendent of public works, having such a vast amount of responsibility, and such great duties to perform, will be an officer in any of your political bodies, who will call together, for the purpose of influencing the selection of that convention, a greater amount of influence and power than any other officer in the State; and it will be upon those who are to be directly interested in his operations as the presiding officer over the operations of the canals. It will be necessarily so. The large mass of the Convention which will gather together from other portions of the State than those immediately upon the line of the canal will have very little knowledge in reference to the matter, except such as they may get from interested persons who come there to manipulate the convention, ready and willing to do any thing and every thing, so that they can elect the man of their choice, and after the nomination shall have been made, there can be no sort of question in regard to the matter that those who are of the party will vote for the nomination. In the case of the superintendent of public works being appointed by the Governor, by and with the advice and consent of the Senate, it throws a responsibility upon the Governor to see to the selection of the individual, because in that case it comes directly from him. It enters not into the consideration, to any very much greater extent, who shall be nominated and selected by the Governor than ten thousand other things that enter into consideration in the selection of a Governor. So far as that is concerned, so far as regards his desire and anxiety for a renewed position, it would be of no immediate political benefit to him. He has his character and reputation at stake to select and to nominate to the Senate a person in all respects eminently fitted for the position; and there can be, as a matter of necessity, less influence brought to bear upon the wrong selection in that case than can be made to operate in the nominating convention for State officers. It is for these reasons, briefly expressed, that we believed there would be a better class of talent, a better adaptation to the peculiar position of superintendent of public works, if selected by the Governor and Senate, than could possibly be made under the conflicting management of nominating conventions. For that reason we proposed the appointment or suggestion of this officer by the Governor, to be confirmed by the Senate. I am of the opinion that, whatever course we take, if we shall come to the conclusion to concentrate the responsibility in this regard, to make it an honorable office, to place it in a position, so far as regards its length or duration, which will make it an office sought after by the best talent among us—we shall have done a great deal toward the improvement of our present canal system. I shall be satisfied, without undertaking to discuss this matter, to consent to that selection, if we agree upon the principle which is here involved, and that is the concentration of power and responsibility, under the assurance, in this case, that that responsibility will necessarily have to be, and will be met.

Mr. HALE—I call for a division of the question, that a vote shall be taken upon the first

part, which provides for the election, instead of the appointment, of a superintendent, before it is taken upon the second branch, which provides for the appointment of assistants by the superintendent.

Mr. E. A. BROWN—The proposed change in the Constitution, in the appointment of officers having charge of the canals, whether the proposed amendment is taken or the original proposition of the majority of the committee shall be adopted, is certainly a very great one; and, to my mind, whichever section is taken is open to very serious objections. At present we have three canal commissioners, a State Engineer and Surveyor, who, I believe, is dispensed with by the previous action of the Convention. We have three canal commissioners, elected, one in each year, to continue for three years. They take charge of the management of the canals. Now, the proposition is to extend this period of service from three to eight years, and to substitute one superintendent of public works, and, I believe, four assistants, to hold office for eight years. Under the proposition of the committee, the Governor and Senate have the nomination and appointment of all these officers. Under the section proposed as an amendment, the superintendent is to be elected for eight years, and he is to have the appointment of four assistants for that period of time. Now, sir, on the question of nomination by the Governor and appointment by the Senate, or of the nomination by a political convention and election by the people, it is said that this office is so important, that the position is such as to give the superintendent great influence in a nominating convention; and by means of that position, and through such influence, he may improperly control the representatives of the whole State, and secure a nomination for himself or for somebody else that the good sense of the convention, acting independently, would not make. If the incumbent of this office, as it is proposed to be made, having under his control and associated with him four assistants having been in office for eight years, and seeking for nomination for re-election, or re-appointment, can have such influence in the political convention as to secure his nomination through this influence and that of his assistants and friends, I ask you, sir, how long it will take that individual, with those powers and with this influence under his control, to secure the nomination of a Governor to be elected that very year, to make the same appointment the very next year when he comes into office, as effectually, as certainly, as surely, as he could secure his own nomination by a convention for election or the nomination of any of his friends whom he may see fit to support. Such a man with these powers under his control, with the influence of the whole canal interest of the State, and all the officers connected with it—all the laborers connected with it—all the contractors connected with it—I will not say all the corruption connected with it, because we mean to drop that word—with these powers, with these influences in his hand and under his control, he could name the Governor of the State; and the Governor would be a mere tool in the hands of the

superintendent of public works,—whose office is to extend four times the duration of the office of Governor of the State—whose influence will be one hundred times as great in any and every respect, upon the policy of the State and the interest of the people, as the influence of the Governor. It would be but a short time before the Governor would be a mere puppet, a mere tool, in the hands of this superintendent of public works for eight years, and of his four assistants, who would control the politics of the State as well as take care of the business of the canals. For one, I am decidedly opposed to any such change in the Constitution. If the people of this State cannot select proper men, one every year, having their eye on them, observing them from day to day, and seeing to it that they manage these canals as they ought to be managed, I would like to know how the people would have any control of this matter, if they put a dictator under the name of superintendent of public works in a position, from which they cannot remove him for eight years. If in order I move to strike out the whole section.

The CHAIRMAN—The first question in order is the motion of the gentleman from Kings [Mr. Bergen], to substitute the other section.

Mr. S. TOWNSEND—I have waited to see if some other gentleman would not rise to advocate the amendment of the gentleman from Kings [Mr. Bergen], the prominent idea of which is whether we shall adopt the principle of the elective or the appointive system. While doubting, in my own mind, the propriety of carrying down the election of our officers so far as it is done under the present Constitution—which fatigues us, and which I said twenty years ago would fatigue the public mind—I have no doubt in my own mind, after more ripened experience, of the propriety of the people retaining, under the form of the elective system, all officers of the importance of the one we are about to create here, an officer whose term of office is described as eight years. And perhaps, in the wisdom of the Convention, it may be decided in this respect, that the necessities of the case justify longer appointment, for undoubtedly by these long terms we draw and attract a higher class of talent and responsibility to these stations. I differ from the gentleman from Onondaga [Mr. Alvord] in saying that the public attention will not be called sufficiently to a nomination of this character, that it will be managed by a convention of mere politicians of the several parties. We must remember that under the operation of the amendment now proposed this will not occur but once in a period of eight years. An active judicial life upon the average—for exceptions but prove the general rule—was declared some twenty years ago to be but fifteen or sixteen years. Now, when we nominate an individual whose qualities are sufficient, under the Constitution, for this responsibility for the term of eight years, we take virtually—supposing the gentleman to have arrived at the age of thirty or forty years—we take half of his active business, public life. It is this principle that I rose to speak of, and it is upon this principle that I support the amendment. If we repudiate that principle now we open the whole question, for consistency should be the line

of conduct to be pursued by a body of this kind above all others, above all political bodies. If we adopt this principle, now, it is virtually conceding that the principle of an elective judiciary was wrong. I take it that there is no majority, or even a strong minority, upon this floor that will now—although we have not had the question immediately before us, yet the subject has been alluded to by the press and in speeches here, and has undergone the investigation of members—that will now say they are not satisfied of the expediencies and advantages of the system. The renomination, at least in the interior, of all such judges as have properly discharged their duties—and in this case also the exceptions confirm the general rule—the renomination of all who desire renomination amounts to a sanction of that principle—the same principle which we are acting upon here. And I say, without extending my remarks further, that if we do not retain it here, by parallel of consistency we should have to assail the elective system as subsisting now under the Constitution for the judiciary. I hope that principle of the election of this officer, if we choose to create the office which the gentleman last up has spoken against entirely—if we choose to get rid of the existence of these canal commissioners and to concentrate the duties in one office—will be adopted. I hope therefore that the amendment of the gentleman from Kings will prevail and be adopted by the vote of this committee.

Mr. WALES—I am utterly opposed to these long terms of office, both as being undemocratic and inexpedient. I therefore move that we strike out "eight," in the third line, and substitute "four."

Mr. SPENCER—Are there not two amendments already pending?

The CHAIRMAN—There are not.

Mr. VERPLANCK—Is the amendment in order? Can we amend the substitute?

The CHAIRMAN—The Chair did not understand the amendment to be an amendment to the substitute, but to the original amendment.

Mr. VERPLANCK—The original amendment provides for five years and the substitute provides for eight years.

The CHAIRMAN—The Chair understands it to apply to the original section, but it is in order applying to the amendment.

Mr. BERGEN—I hope the amendment of the gentleman will not prevail. If we are to have a superintendent of public works, one individual to take charge of all this matter, of the care of the canals, we should have in that individual a person highly qualified, an engineer of the first class, the best that we can procure. Now, to obtain the services of an individual of that class, you must give him an opportunity for long service. It would be a difficult matter to obtain the services of an individual of that class for a short period, or for an uncertain period. He can obtain a situation under a private corporation, where the certainty of long employment may be depended upon, and it will be preferable to taking a position under the government for a short time. It is for the interest of the State to hold out the strongest inducements we can in order to get the highest

talent to serve in this capacity, and we can only do that, by making the appointment for a long term. That is the reason, as I understand the matter, why the committee were in favor of this long term. In fact, if the term had been made longer, the inducement would have been greater, and the probability would certainly have been greater of obtaining a person qualified for the position. The more you shorten it, the less the inducement, and the greater the probability of getting an inferior man to discharge the duties. It is, therefore, for the interest of the State, in my judgment, that the period should be at least eight years, and I would vote in favor of an amendment to make it still longer. I believe it would be for the interest of the State to increase the term rather than to diminish it. These short terms of office which we have provided for in our old Constitution, the uncertain tenure of holding the office, not only in this case, but in many other cases, prevents individuals of high character from accepting office. Take an individual of high talent, well qualified to discharge the duties of an office, judicial or otherwise, and make the term two, three, or five years, and he will refuse to take the office, because at the expiration of his term he has lost his business; he has lost the custom he had in his business, whatever it may be, and he cannot, without great difficulty, get it back; and he is compelled to go into the political arena and sacrifice his independence in order to secure a renomination for himself and his reelection, so as to procure bread to sustain his life and that of his family. Now, a long term certainly has the tendency to induce individuals to accept who are better qualified. The gentleman might almost as well carry out his idea so as to have the superintendent of public works elected for only one year. It would only make the matter worse than it is now. The more you reduce the term the greater the chance of evil instead of benefit to the public or the State being the result. I have nothing in view, so far as the canals are concerned, except the interest of the State. I do not reside in a canal district or in the vicinity of any canal, but I do know a little in relation to the views of engineers who are employed upon the public works. An engineer, I know, desires and prefers a permanent situation to an uncertain one. If you desire to get the services of the most competent engineer for this position that we can obtain, then make his term long and your chances are much better than with a short term. For these reasons I hope the amendment will not be adopted.

Mr. CONGER—I suppose it will be almost unnecessary for me to utter a word before the committee at this time, nevertheless, I will venture to lay before the committee some general principles which should guide the action of this Convention, not only upon this subject, but upon many similar subjects which are to be brought before it, because we are aware that in the report of the Committee on Prisons, and the report of the Committee on Education, superintendents of prisons, as well as of the educational interests of the State, are contemplated. So that, if there is a design to have a general and uniform system in regard to these superintendents, those that I have

named, as well as of the canals, it is desirable that we should have some clear conviction at the outset, of the manner in which those superintendents should be appointed and their terms of office designated. In the first place, you either intend that these officers should be dependent for their tenure of office upon political changes, or you do not. If you do not, if you would make these offices independent, so far as possible, of political changes, you must observe this one law. You make your political changes every two years. You elect your Governor, who is to nominate men for these offices to the Senate every two years. If you make the term of office of any of your superintendents a multiple of two, then of necessity you make your offices directly dependent upon political changes. The only way possible to guard against this is to make the term of office an odd number of years. You have your choice of three, five or seven. The committees with which I am associated I believe have recommended the term of five years as the medium term of office, being neither too long nor too short. Our highly honorable friend from Kings [Mr. Bergen] speaks of making the tenure of office longer than eight years. He overlooks this fact, that the expectation of life of a man who has reached a sufficient number of years to entitle him to a position of such great value and trust, according to the tables which we use in our life insurance valuations, is but a fraction over eight or nine years; so that, when you say you will give such a person a tenure of office of eight years, it is equivalent to saying that you will give him a life office, for all practical purposes. Now, I apprehend that the people of this State are unwilling to make any office a life office. They are unwilling to make the tenure of office so long as to make it equivalent to a life office. If there shall be any exception that will be sustained by this Convention and by the people, it will be in the case of the judiciary in the court of last resort. I do not know how this will strike other gentlemen upon this committee, but I think I do not go beyond what may be presumed, when I say that it is the will and expectation of the people, that none of these officers should have a term of service longer than five years. That is the first proposition in regard to this office. I am free to say that I am somewhat surprised that there has been no suggestion whatever that it will be wiser to continue the responsibility in the hands of commissioners, such as have heretofore had charge of the canals, than to concentrate the whole power and responsibility in the hands of one man. I am free to say, that I would be desirous of obtaining, if possible, a man who would fill this office and take charge of the superintendence of these canals for a period of years; but I ask gentlemen whether they know, in the whole range of their experience, a man under fifty years of age, who is competent and who would be willing to assume all the responsibility and the care connected with the management of the canals, for the State, for a term of years. I think I have in my mind's eye a man so eminently fitted as a civil engineer, a man of varied experience, that I would be willing to

trust, if he would accept it—although he is of a different political faith from myself—with a charge of such great magnitude; but I fear that he would not accept it. His advanced years would prevent him, in all human probability, from fulfilling the trust, if he were to accept it, even for so short a period as five years. I suggest this as a practical difficulty; and I ask gentlemen who have recommended this plan—and I do not intend to make a frivolous inquiry—I ask them, as this is an important part of the plan which they have recommended, to tell us from what class of men, professional or otherwise, they expect to get the individual that could be nominated by the Governor and appointed by the Senate to assume an office of this magnitude? I have nothing further to say. I have no objection to the scheme if it can be carried out, but before I shall vote for the plan recommended by the Canal Committee, or for the substitute proposed by the minority, which differs mainly in this, as I understand it, that the people can elect this superintendent; I desire to know of the committee, if it will be kind enough to give the information I ask, from what class of men they expect to get the functionary that will assume a trust of such vast magnitude and carry out the work of repairing and putting the canals in good service and exercising all the trusts connected with them. What single man is there in the whole State that will be willing to assume the responsibility?

Mr. ALVORD—I regret very much indeed the absence of the chairman of the Committee on Canals at this time, while the discussion of the subject is going on; also, the absence of the gentleman from Ulster [Mr. Schoonmaker], who is a very efficient member of the committee, and who requested me, when this matter came up, to telegraph to him, which I have done this morning, in the hope that he would arrive in time to take part in the discussions of this particular matter. But, inasmuch as it has been determined by the committee and the Convention to go on with the discussion, I propose to do as well as I can in defense of the position taken by the majority of the Committee on Canals upon this policy. I will answer the gentleman from Rockland [Mr. Conger] before I forget it, in reference to the selection of persons competent to do this work. I will speak also of a political opponent in this connection, and I can speak of others, also; one who has been recently elevated to official position by the votes of the people of this State, who takes a position upon the coming canal board, a man eminently fitted by the habits and education of his entire life, to take and perform this work to the entire approbation of the people, and in my opinion with eminent success. I refer to the person lately elected State Engineer. Now, so far forth as regards the action of the canal commissioners, their actual, practical operation upon the line of the canal, not during the incumbency of the present officials alone, but before, almost all the way back to the year 1846, the three canal commissioners together have never devoted a year of time to the canal in any one year. Instead of each devoting a year of time, the three canal commissioners to-

gether, in any one year, have never devoted a year of time as men ordinarily devote their time to their business. There is no difficulty in one man grasping the entire of this business, and in one brain physically enduring all the necessary work connected with it.

Mr. M. H. LAWRENCE—Does the gentleman feel that there is an imperative necessity for these four assistant superintendents, extra commissioners, or whatever you choose to call them? We have now three commissioners. Would not the effect of this provision be to give us five commissioners instead of three? If that is so, we are not improving matters much, nor saving much.

Mr. ALVORD—The last Legislature abolished the office of superintendent, but they got round that provision by the appointment of assistant engineers to perform the duties of the superintendent, so that we have got instead of four some fifteen or twenty upon the line of the canal. These persons are designated as assistant superintendents, and they go to work and superintend and manage in the localities as they shall be directed to do by the general superintendent, as the assistant engineers take charge of the control and management under the direction of the canal commissioners. The object and idea is now to concentrate the whole matter in the hands of one individual, and have uniformity of action on the line of the canal, from one end of it to the other. In the history of this country, in all the great enterprises which have been undertaken, there have been found men who could undertake the control and management and superintendence of works of greater magnitude than the canals of this State. See, to-day, the New York Central railroad. It has one general superintendent, having the entire control and direction of the whole road, the whole management of the assistant superintendents, and of all the officers connected therewith.

Mr. M. H. LAWRENCE—I would like to ask the gentleman again what is to be the power and what are the duties of these assistants. Will he dispense, in case he has these assistants, with the number now employed by the present commissioners?

Mr. ALVORD—I will answer the gentleman again. This Convention has seen fit deliberately to abolish, so far as regards its action, the office of State Engineer and Surveyor, and they have done it for this reason, that the canals are finished; that there is no necessity for the superintendence of a professional engineer constantly in attendance along the line of the canal. It is now a finished work, and is in the hands of operatives to keep it in repair. When a necessity for an engineer arises—when it becomes necessary from any failure of the works, or from any extraordinary occasion to employ an engineer to perform the work falling within his province, an engineer can be employed for the time being, and when he shall have performed that work he can be discharged from the service, and the State may be released from so much expense. I hold, sir, and I think it cannot be denied, that whenever you have a finished work you have got through with the necessity for the intellect of the

engineer that has produced that finished work; and if you undertake to keep him as a simple engineer, with no other duty to perform except as an engineer, you will double and treble the cost or the maintenance of the work under his supervision, which can be carried on and managed and controlled by mere operatives. My experience and my observations in this regard, have shown me clearly and conclusively that the employment of engineers to the extent they have been employed under the canal management in the State for the last seven or eight years of its history, has tended to enhance the expense of the repairs and maintenance of the canals. The work is completed, and for the purpose of keeping it in a proper condition, it seemed to our view that one practical man, rather than ten engineers, would do the work more efficiently than the ten, to say nothing of the expense. Under our present system we have three canal commissioners. They are placed over three separate and independent divisions of the canals. It is true that so far as regards the shape and size of the locks, so far as regards the shape and size of the prism of the canal, as a matter of necessity they must be the same upon each division; but in the application of labor toward the improvement or repair of the canals, in the manner in which the work is done, there is a difference in each division; and when these commissioners come together for the purpose of determining what shall be the best plan for their particular localities, acting together as a board, the result is that they go to work and administer the affairs of each of their divisions irrespective of the opinions of their colleagues, and thus there is a difference in the management of the canal upon the different divisions. We have seen in times that are gone by—I do not undertake to mention names—that one division of the canal has been in a condition of complete repair, so that it could be easily navigated in that division, and boats could pass without delay, and yet all the advantages of that have been entirely lost by the want of competency in the immediately adjacent division, rendering that which was in good condition unavailable because of the fact that connected with it was another portion of the canal that was not in good condition, and which might have been put in good condition if there had been a different superintendent in charge of its management. This is one of the reasons why I believe that, in this case, as in all other cases where it is a mere matter of business, a simple matter of administration, with reference to the business of the canals, or any other business, the more you can concentrate the intellect that is to manage it, by concentrating the power in the hands of one individual, the better, so far as that matter is concerned, will the work be done and performed. There will be a harmony, there will be a consistency, in the operation of the canals, from one end to the other, that will produce the best possible results. Another thing. I have no sort of question but that, from the developments of the past, we are to take a back step so far as regards the canals of this State with reference to their maintenance and repairs. We are to abandon our contract system and go back to the

system which obtained when the State took care of its own canals. There can be no question it seems to me, that the present system has met with the disapprobation of all classes of people—that it has been a perfect and entire failure, and that the interests of the State are against its further continuance, because it has resulted simply in seeing how not to do it—in the contractor getting along with as little amendment on the line of the canal as possible, and passing it off ready to drop to pieces, out of his hands to those who are to follow him, so that from one end of the State to the other the canal is in such a condition that with the work upon it which is necessary to be honestly and fairly done, it would cost one-half the revenue of the coming year to put the canal in a decent condition. There is no doubt I trust, but that the coming Legislature will abolish this system of contract and go back to the old system. A gentleman near me says that they cannot, under the Constitution. It is a question of contract for repairs, and not a contract for original work. Under the Constitution, original work to be done must be let to the lowest bidder, but a contract for repairs is a legal provision and not a constitutional provision. With regard to that matter the work can be done by putting its direction in the hands of one individual. These assistant superintendents would form a competent corps of men upon the different portions of the canal, to take care of the ordinary and necessary repairs of the canal; but should a break happen, for instance, on what is now called the western division, as it is now, if the break amounts to more than a certain sum of money, the State has got to pay its share of it, and the operation of the contract system is that it pays its share and the share of the contractor too, and a profit besides. The contractor goes to work and plows over the entire country in the neighborhood as much as possible, and employs all the men he can get, for fabulous prices, for the purpose of, as soon as possible, repairing that break. If a single superintendent had the entire control and management of the canal—and that should include a telegraph belonging to the department along the line of the canal reaching to all parts of the canal—then when there is a break the assistant in whose division it occurred could telegraph to other localities to send him all the men they could spare from their immediate localities, who could be employed at once upon the break and repair it in a short time and at a reasonable expense to the State—avoiding this unlimited cost and the difficulties which must necessarily occur in the absence of such an arrangement. Your canal contractor, under the present system, if he has the power in his hands to keep the canal in repair has no power, or at least has never exercised any power, of calling the operatives from other portions of the canal to repair breaks. But under this system the entire operative force in the State, except what is absolutely and immediately necessary in other localities, can be concentrated upon one point, and thus avoid the enormous expense of taking care of these sudden breaks upon the canals. Now, with regard to the political question suggested by the gentleman from Lewis [Mr. E.

A. Brown], he has undertaken to speak of this as being objectionable because of the great political power which must necessarily be put into the hands of the superintendent of public works. Now it seems to me—I may be mistaken—that where the party in power have three canal commissioners, scattered over the State in different localities to work for one political party, they have fully as much power as a single superintendent upon the line of the canal could possibly have. What is your superintendent's power in that case? He has, it is true, four superintendents, but he is scarcely ever himself in contact with the operatives along the line of the canal, and those operatives will be more directly under the power and control of the immediate political managers in their several departments than under that of the superintendents. There cannot be, in my opinion, in that case, any such exercise of political power upon the part of the superintendent as to make it superior to the power now exercised by the three commissioners when they all belong to a single political party. And we have had an instance this fall—we have had other instances in the history of our State—where the entire political power was not possessed by the canal board or the canal commissioners; for all belonging to the same political party, and exerting so far as regards their political power over the canals, their influence in favor of that party, with all their intelligence and skill in those positions they did not succeed in taking care of the politics of the State. They will not in the future, no matter who has the power, whether it is in the hands of a single individual or whether you confide it to three. I do not think there is any danger in that regard that the political power will be employed to the disadvantage of any party or of the people. That thing will take care of itself. The people are not held down in this State by any machinery of that kind very long. They cannot be, because if that were true the power would be perpetuated under our present canal system in the hands of the party who held the power in the administration of the canals, and we are aware of the fact that, so far as regards both of the great parties of this State, when they have had this canal power, the result has been, in very many instances, the absolute breaking down of the party in a great and exciting political contest. The change that has occurred has been brought about by the fact that there was a desire upon the part of the out of the same political faith with the ins to get the ins out and to go in themselves, rather than any other cause. There is no sort of danger, in my opinion, in reference to this question so far as regards the political idea set forth by the gentleman from Lewis. It may be well, in order to avoid all possibility of any interference with the selection of the Governor of the State, that the suggestion made by the gentleman from Rockland should be taken—that instead of the time being eight years it should be seven. I have no sort of feeling upon that subject. I only say this in regard to the matter: that it is a matter of necessity that the highest possible talent combined with uprightness and integrity that can be obtained, should be had for the purpose of managing the canals of

this State; that under our present system, with the tenure of office and the amount of compensation, that is an impossibility unless it is done by the individual who takes the office, not for pecuniary compensation, but merely because he can pursue it as a pleasure, and is able to live outside of it so far as regards the necessities of life. You cannot command the best talent that ought to be had for such a place under the present system. In the other States of this Union, two or three of them, there is a superintendent of public works, who stands, so far as regards his official position, as high as any other officer in the employment of the people. There are in the countries across the water, superintendents of public works who are parts and parcels of the government, clothed with all its powers and clothed with all its dignity, and consequently, growing out of that fact, the best possible talent is secured in those places.

The hour of two o'clock having arrived, the PRESIDENT resumed the chair in Convention, and the Convention took a recess until seven o'clock.

— EVENING SESSION.

The Convention re-assembled at seven o'clock and again resolved itself into Committee of the Whole upon the report of the Committee on Canals.

The CHAIRMAN announced the pending question to be upon the amendment of Mr. Wales to the third section of the report under consideration, by striking out the word "eight" and inserting "four."

Mr. ALVORD—I do not desire, upon this particular point, to occupy very much more of the time of the committee. But I will proceed to say one or two things more in reference to this matter, and then leave it for the disposition of the committee, with which, of course, I must necessarily be content. So far as regards the proposition of the gentleman from Sullivan [Mr. Wales], which is under consideration, I was remarking at the close of our previous session that it was a matter of very serious thought upon the part of the committee, in connection with this change, that, as a matter of course, taking into consideration the whole of the canals, if placed under one supervision, one head, it would require capacity and talents of the highest order, and that, as an inducement for such persons to embark in a strife for the position, it would be well to give them as long a term as possible, as should be thought to be compatible with our ideas of the position. Now, sir, the gentleman from Rockland [Mr. Conger], in speaking with reference to the duration of terms of office, had occasion to say that it was contrary to our views and opinions to elect or appoint men for life to office, and that this was a term looking in that direction. Our experience in regard to that matter, as connected with the judiciary, is, I believe, that there are gentlemen, judges of the supreme court in this State, who were elected originally in 1846, under the Constitution of that day, and that a majority of all the judges in the State of New York, who have been elected under the provisions of the Constitution of 1846, have been re-elected for one or more

terms; so that, in fact and in truth, while we have given the term of the judicial office eight years, under the Constitution, in practice, the people have given from sixteen to twenty-four years by a re-election and an again re-election of the incumbent. The people have become satisfied that was the better course for them to pursue. If a person has occupied the position of judge a certain length of time he has gained a certain amount of education, and hence is better able to discharge the duties of the position. That is largely the reason why the people have been, with an exception here and there, inclined to the re-election of their judges, so that it seems we have judges in this State who have not been appointed or elected for life, who have still held office over the eight years prescribed by the Constitution. Another thing, the gentleman from Rockland had occasion to say there were very few men within the limits of this State who had not arrived at the age of fifty years who were fit and proper persons to discharge the duties of the position contemplated in this article. I am one of those who believe that in these modern days we have come to the conclusion that men are as ripe and mature in judgment and able to form ideas and exercise the faculties of which man is possessed, in the direction of their business or engagements, who have not in all cases arrived at the age of fifty years, as those who are older. It does not necessarily follow that to that age and beyond it, is all the talent, all the ability, all the integrity of a person seeking office, or holding office. Another thing, even supposing it were so, if it were incumbent upon us as a matter of policy, to choose and select persons for this position who were fifty years of age or over, there are instances without number almost of those holding official position in the State who have been more than eight years in office, and beyond fifty, still as capable of performing the service they are called upon to perform as if they were younger in years. So that the eight years' term does not either extend to the duration of a man's life, nor, if it is necessary to select one over fifty years of age, does it imply he is too old to perform the duties of his office under the Constitution. My idea in regard to this matter is that this office does not necessarily involve, any more than any other official position in our State, an aggregation or concentration of political power; and that it will be found to the interest of the people if this line of policy is pursued. When they have gotten hold of an individual who will properly perform the service as anticipated and expected, they will be loth to part with him at the end of the eight years; and, as in the case of our judges who show themselves perfectly competent and able to perform the work, they will be re-elected for another term. And in that way the people will be able to get more of service with really less money than they have been enabled to get in the past. I have heard it remarked over and over again, and dates and figures shown by parties who have been posted in the matter more than myself, that there has not been a new canal commissioner, no matter what his position, no matter what his character, no matter what his ability—there has not been a single canal commissioner elected to that office

for the first time in the State of New York, for the last twenty years whom it has not cost the people of this State, at least one hundred thousand dollars to educate. To educate him to the performance of his duties, at least one hundred thousand dollars. We are constantly electing canal commissioners, one every year, and in the ordinary course of politics in this State, we very seldom, if ever, continue a canal commissioner in office more than the term of three years. There have been one or two exceptions since the adoption of the present Constitution. In that point of view we shall be expending too much of the people's money needlessly for the purpose of keeping up the present method of managing the canals. I trust, therefore to these considerations thus hurriedly given out, and unexpectedly, so far as I am concerned, for I supposed the gentleman from Ulster [Mr. Schoonmaker], and the gentleman from Ontario [Mr. Lapham] who have taken the laboring oar, particularly in the advocacy of this portion of the report, would have stated these views. I leave the matter to the consideration of the committee.

Mr. BECKWITH—Having been one of the Canal Committee, and having looked into this subject with considerable interest, and given to it considerable reflection, I propose to make a few remarks for the consideration of the committee now having the subject in charge. The committee will observe that we propose to change the entire system. The system which has prevailed in this State under the Constitution of 1846 is a very complicated one, and the responsibility has been divided between so many different officers and boards of commissioners that it has been very difficult to trace responsibility, when any thing has gone wrong to the proper persons. Under the present system we have canal commissioners, we have the canal board, we have the contracting board, commissioners of the canal fund and the engineer department, all of these performing separate and distinct duties, and yet so united, so blended that it is impossible, almost, to trace responsibility when any thing has gone wrong. In addition to these there is the auditor of the canal department who has certain duties which have also complicated the whole matter. Under the circumstances, the canal committee thought best to simplify the system if possible. On looking into this third section carefully, you will see an attempt has been made to fix those duties upon a particular officer, so far as the management of the canals are concerned, so that a present responsibility can be found. The canal commissioners, the engineer of the canals, and the other officers constituting the different boards, are constitutional officers, and being provided for by the Constitution, and no power being given to remove them for incapacity, or neglect of duty, or malfeasance, there is no way of getting rid of these officers if delinquent, except by impeachment. This is another evil which the committee wished, if it be possible, to remove. Therefore you will observe that the committee have provided for a superintendent of public works, and in that article have also provided for his removal, in case of neglect or malfeasance or incompetency, without any resort to

impeachment. It was remarked by the gentleman from Rockland [Mr. Conger] that it would be very difficult, he thought, to find an individual competent to take charge of those canals, their superintendence, and the entire control of their management; and yet, if gentlemen will reflect a few moments, they will see, I think, that the duties of a superintendent of the canals are not as difficult, are not as complicated, do not require the same watchfulness, as the superintendency of the New York and Erie road, or the New York Central. In several particulars the responsibility of the superintendent of a railroad is far greater than that of a superintendent of the canals. For a superintendent of railroads has to take charge of the running of the trains; he has to fix the time when each train, whether it be a freight train or a passenger train, shall leave, and when it shall arrive at a certain point; he has charge of the track master, as he is called, a person whose duty it is to see whether any portion of the road is out of repair—all this is under his superintendence, and I think it requires a man of as much talent to take charge of the line of the New York and Erie railroad, or the New York Central railroad, a man of as much talent and as much watchfulness as it would require of a man to take charge of the canals of this State. (There is no fear of collisions on the canals ~~as~~ on the railroads; all the canal superintendent has to do is to see that the canals are kept in proper order, and that in their navigation they are properly managed. The canal commissioners being, as I said before, constitutional officers, and there being no power in the Constitution for their removal short of impeachment, they may disagree in the measures to be pursued in regard to the separate sections of the canals. Hence difficulties arise. If either of them is wrong, there is no one to set him right; if he neglects his duty, or is guilty of malfeasance, there is no power to remove him short of impeachment. This is an evil we desire to remedy, and throw the responsibility upon one man, and give him to understand distinctly that if he neglects his office, or is incapable, or is guilty of malfeasance, he can be removed, without impeachment, by the Governor, with the consent of the Senate, or be suspended. As I before remarked, the incumbent need not possess more talent than is necessary for a railroad superintendent. I think, indeed, it requires less watchfulness to fill the position of canal superintendent. If we offer a salary sufficient to compensate him, I have not the least doubt we can obtain a competent person. Pay a salary equaling that paid to all three of the canal commissioners, and it will certainly secure a man who is capable of taking the control and management of the canals. By giving him the selection and appointment of four assistant superintendents, to be located on different parts of the canals, you will have the management vested in one officer, and one mind regulating the whole. Then there will be no conflict of opinion or judgment in regard to management. That being the case, I can see no reason why they may not work harmoniously. Now what have you? You have an Engineer; you have a great number of sub-engineers;

if the Engineer disagrees with the canal commissioner about any particular improvement, or the management of any portion of the canal, each stands upon his own dignity; each says, I am a constitutional officer; you cannot remove me; there is no power to remove me short of impeachment; I shall hold my whole term out. This is another thing which we propose to remedy. We do not wish—and no man, I think, if he owned the canals, would put them under the charge of three distinct superintendents, and an engineer besides, giving each one of them a distinct power, and making each independent of the other. On the contrary, each individual, just as railroad companies do, would select one general superintendent, giving him the control of all the sub-agents. By that means, I think, we should secure a proper, harmonious and efficient operation in the management of the canals. The assistant superintendents are likely to be removed by the superintendent of public works if they fail to obey the orders, or if they neglect the discharge of their duties. Being thus liable to removal, they will be much more likely to attend to their duties and perform them punctually and honestly. Those are the evils which we propose to get rid of. The division of responsibility was one of the great evils in our present system. Under the system we propose, the superintendent, if the services of an engineer be necessary, can employ, for the time being, an engineer, pay him for his services, and, when they are concluded discharge him, and so save the State a large sum of money. By this course, we can get rid of this irresponsibility, of this division and confusion and contention between the different officers of the canal department. We will secure unity where, if any thing goes wrong, we can put our hands upon the individual who is responsible.

Mr. CONGER—I hope that amendment will not prevail. If there is opportunity to amend it, I will move to amend by inserting the word "five."

The CHAIRMAN—There are two amendments now pending.

Mr. WALES—If you will make it three, so as to have an odd number, I will accept it.

Mr. E. A. BROWN—I undertook to answer what I understood to be the argument of the gentleman from Onondaga [Mr. Alvord] against the election of the proposed officer. The objection I understood him to make was that such an officer being a candidate would have great influence over nominating conventions. In answer to that I suggested what seemed to me to be a perfect answer—that the same influence which would control a nominating convention for the office could control the nomination of a Governor who was subsequently to nominate this officer. So that, so far as influence was concerned, nothing is gained by putting the power of appointment in the hands of the Governor instead of leaving it in the hands of a convention. For my own part, I am as well satisfied to repose the nominating power in a convention of delegates from all parts of the State as I am to repose it in the Governor who is the nominee of the convention. The gentleman says that three canal commissioners act-

ing conjointly have not been able to control the politics of the State, which is very likely. I have not insisted that one can control the politics of the State. But the Governor who names the superintendent of public works can be controlled as well as a nominating convention. It does not follow—it is not true, historically, it is not true, practically—that the three canal commissioners of the State always act in concert politically. Next year it will not be so; it has not been so three years in succession at any time within my recollection. Gentlemen of each political party have been members of the board of canal commissioners, and members of the same party who have held this office are not always acting in concert in relation to the nomination of any particular officer. Now, sir, in relation to this idea that we want a superintendent of public works who shall have the entire control of all the canals of the State, and of all the men who are employed in relation to those canals, whether as engineers, as superintendents of repairs, or laborers, of the men who furnish supplies of lumber and of every thing else, the desire is to have this power in the hands of one individual, and to have all these things superintended by one controlling mind. Sir, is not this a great departure from the theory of our government? Why, we have instances of this precise thing elsewhere. The Emperor of Russia has the entire control, not only of the canals and railroads of his empire, but of its judiciary and every thing else connected with it; and I do not see why the argument is not just as good if we say, make a Governor who shall himself be the responsible man for every thing. Let him control the canal department and every thing else. If a break happens in the canal go to the Governor—he is the responsible man. If there is a default by the officer who collects the revenue, the Governor is responsible. Go to him—hold him responsible, and give him power to appoint the collecting and disbursing officers, the engineers, and all the men connected in any way with the administration of the canals, and also, of course, the officers connected with the department of education, the administration of justice, and every other department of our government. Carry out your theory in this way. Make it uniform, and let the same principle control every department and ramification of government throughout the State. At present you confine your Governor to a term of two years. Give him a term of eight years, make him absolute. Do not make it necessary to impeach a State officer for malfeasance in office, or corruption, or incapacity, because if you do, you will have to go through the ceremony of trying him. You will have to have him in some form presented by the house of Assembly, and as I said, will have to try him in some way, before you can turn him out. But just take this other plan. Give to this great mogul “the superintendent of public works” full power, and he can turn him out without any proof of his incapacity, and if he chooses for the very reason that he has more capacity than the head man over him. Do not go through the ceremony of having him impeached and tried, but turn him out summarily by this one man power. That is substantially the plan proposed by gentlemen

here. Why not do it? It is a very simple way. Why, sir, the simplest government under heaven, is the government where one man directs every thing without the check of a legislative body or an advisory council. That is the thing to do, and that is the way to do it, according to the theories and arguments put forth here, soberly, in this age of the world and in this country. Sir, what is the theory of our government? It is that the people have some sort of capacity and intelligence; that they have capacity to select legislators, and frame laws, and provide conventions to form and reform constitutions, and to select canal commissioners to take charge of the canals of the State. But the gentleman says, “look at the canal board.” Well, sir, what is the mischief about the canal board? Has any body complained that they ought to be impeached, that they have failed in their duty? Complaints are made, to be sure, that they have not in all respects discharged all their duties, but is there any officer in the State of whom some complaint has not been made? Human frailty exists in the canal board, as it does elsewhere; but is there any difficulty about the performance of their duties? Do not the people know what those duties are? and can they not insist upon their performance? The gentleman says, there are commissioners of the canal fund. To be sure there are, and there should be commissioners of the canal fund to see what debts have become due, and what debts are contracted, when the power is given to them to contract debts. But is there any difficulty about the commissioners of the canal fund? Do they hurt any body? You will have the canal board and the commissioners of the canal fund melted down into one great “superintendent of public works,” and then you will have unity of action. There will be no differences of opinion in his mind. He will be supreme, omnipotent. We hear about differences of opinion between the canal commissioners. I should like to know if it is not true that the canal commissioners form a board of their own; if it is not true that when measures come up before the three commissioners a majority of them decide the questions, and whether they do not all acquiesce in the decision of the majority. They do, sir, and there is no difficulty about that; and as to differences of opinion, when has any quarrel between them resulted in any public disadvantage? True, your great one man cannot have any differences of opinion with himself. He can superintend the canals from one end to the other, and control all the engineers and laborers, and take charge of every thing just as well as the superintendents of the Central road can fix time-tables. Well, he may do that; but is it for the interests of the people of the State to commit this great power to any one man, instead of leaving it in the hands of these commissioners, three men, not always of one party, but commonly of different parties, selected generally from the great State of New York by the conventions that assemble to represent the great parties of the State, and submitted to the people, and by them approved. Is there any lack of brains in this State? Do you know of any particular class of men, in intellect or in acquirements, so far above the common level that they

refuse to serve as State Engineer and Surveyor for the term of two years? I do not. I have never yet heard of the first man who was offered that office for the term of two years who refused it. If there is such a class of men I should like to know who they are and where they are. I do not myself know from what class this great officer is to be selected under this new system who cannot be had under the present system. Why, sir, in that office of State Engineer and Surveyor we have had as good engineers as could be found in the State elected for two years only; we have had such men as De Witt Clinton, Stephen Van Rensselaer, Samuel Young, and other men of great talent and reputation, for canal commissioners; and, as I said before, I do not know of any body so great that he has refused to serve if elected for the ordinary term. Will the people of this State sanction this one-man power? I think not. In my judgment, they have not called for it, and I do not believe they will ever sanction it. Certainly they will not until they are prepared to do away with their present form of government and to give up the theory that the people of the State are the sources of power, and that they are competent to select their own executive and administrative officers.

Mr. ALVORD—I desire to ask the gentleman a question. Is the office of Governor a one-man power? Is the office of Comptroller a one-man power? Is the office of Secretary of State a one-man power? All these officers have distinct departments and official positions, and this seems to be simply a matter of providing another distinct office and department to deal with another distinct matter, just as these officers deal with their departments.

Mr. E. A. BROWN—I do not see that the question of the gentleman disturbs my argument at all. Formerly we had more than three canal commissioners, but the number has been reduced to three. The gentleman says that they have failed to do their duty. If so, they ought to be impeached, and, if guilty, removed. There can be no difficulty in seeing that they are held to a strict accountability. But the argument is that you must have all this power in one man. It is not claimed that we should have the powers of the Governor and those of the Secretary of State combined in one office. According to this theory, the Governor, with a private secretary, appointed by himself, could take care of the State Department. I see no reason, sir, why, in the management of the canals, the whole power of the State, so far as the canals are concerned, should be put into the hands of one man. Another suggestion is made, that when this "superintendent of public works" wants an engineer, he may hire one, and when the engineer finishes the job, he may be paid off and let go. Now, sir, if you should happen to have a superintendent of public works who was not particularly honest, and was particularly ambitious, I should like to know how many engineers would be employed, at the expense of the State, just before the time for making nominations? And employed to serve how long? Why, until the political emergency had passed; and then the State would pay them off, and thus you would have the political machinery run at

the public expense. If any body has cheated or defrauded the State—I do not say that any body has done so—but if any body has done so, under our present system, I would like to know what such a specimen of humanity would do with all these great powers placed in his hands for eight years.

The question was put on the motion to strike out the word "eight," before the word "years" in the third section, and insert instead the word "four," and it was declared lost, on a division, by a vote of 33 to 38.

Mr. SPENCER—I move to amend by striking out the words after the word "Legislature" in line four, down to, and including the word "navigation" in lines seven and eight.

Mr. BERGEN—I think the amendment is not in order. I move the adoption of the article as reported by the minority of the committee. If I mistake not, the motion is to amend the report of the committee.

The CHAIRMAN—The Chair understands that the motion of the gentleman from Steuben [Mr. Spencer] is in order.

Mr. SPENCER—I ask the Secretary to read the words that I moved to strike out.

The SECRETARY read the words moved to be stricken out, as follows:

"He [the superintendent of public works] shall be invested with the control of all matters relating to the repairs and keeping in navigable order of the canals, and of any improvements that may be authorized by law, and of the rules and government of their navigation."

Mr. SPENCER—My object in offering this amendment is to leave with the Legislature some control over this subject, and not to vest in a single officer this enormous power; at the same time exempting him from all supervisory control. If this provision as reported by the committee shall be adopted, the officer contemplated by it will be absolutely free from all control, and will possess a power as despotic and absolute as that of any sovereign in the most absolute government in the world. In our past history there have been but an instance or two where the Constitution itself has attempted to define the power of any officer created by it or of any department of the government, and then only in very general terms. One such instance is that of the Governor who is vested by the terms of the Constitution, generally with the executive power of the State; certain powers are given to other officers, but there is no instance, except perhaps in the single case of the Governor, of power being given to any officer or department of the government so absolute as that which is conferred by the provisions of the section which I have proposed to strike out, and certainly I can see no harm in at least giving to the Legislature such control over this officer as will admit, in case it should be necessary, of their so modifying his powers as to meet any exigency which may hereafter arise in the administration of the affairs of his department.

Mr. BICKFORD—Without rising to make any extended remarks in relation to this matter, I simply wish to say that I hope this amendment will prevail, because it retains where it should be

retained, an important portion of the legislative power of the State. That those officers should have entire control without any responsibility to the Legislature, and without their exercising any supervisory guardianship over him, seems to me preposterous. I think the amendment eminently proper, sir, and I hope it will prevail.

Mr. ALVORD—It seems to me that this criticism is rather more nice than correct. There cannot be any question that this officer can only proceed according to due course of law. This article only gives him power to put into execution the laws of the land. That is the beginning and the end of it. It provides that the Legislature shall not give the power to put these laws in execution into other hands than his. It does not provide any thing else, and it cannot be construed to provide any thing else. If the gentlemen see any danger in this provision as it is, let it be put in such a form that there can be no mistake, but let it be so that the Legislature cannot transfer the power to some other officer created by themselves, which, it seems to me, they could do under the amendment offered by the gentleman from Steuben, and which they have already done in the case of the Comptroller, conferring his power upon the auditor as the financial officer of the canals. I have no objection that this section should provide that he shall be invested with such and such powers, under laws to be passed by the Legislature, or under the laws of the State. But what I do desire, and what all the committee desire is, that so far as regards the execution of the laws of the State with reference to the canals, the power to enforce it shall belong to this officer, and cannot be given to any body else. I have no objection to this amendment, and I ask the gentleman whether it will not be satisfactory to him. "He shall be vested, under the control of the Legislature." That clearly prevents the Legislature from giving this power to any one else, but it strikes me that under the amendment offered by the gentleman from Steuben [Mr. Spencer], the Legislature would have power so to arrange matters as to create another officer to do this very work.

Mr. BICKFORD—It strikes me that perhaps it would be better to say, "He shall be vested with the execution of all laws relating to the repairs and keeping in navigable order of the canals," etc. That would obviate the objection that I feel to the section as it now stands.

Mr. E. BROOKS—This is a very important question, which we all know to be one of the most important questions which can possibly come before this Convention. It proposes a complete change and reform, and, indeed, almost a revolution in the administration of the canals of this State, and I, for one, am ready to strike as deep and broad as any other gentleman, to accomplish the necessary reform. At the same time I hesitate to give so much power as is embodied in the article now under consideration, unless some one of the amendments should be adopted, which have been suggested by the different gentlemen who have named them before the committee. Let us read these words and see what they mean: "He shall be vested with the control of all matters relating to the repairs and keeping in navigable order of the canals, and of any im-

provement that may be authorized by law, and of the rules and government of their navigation." This one man, who is the superintendent of the canals, will be vested with the control of all matters relating to canal repairs, canal expenditures, and canal regulation, and canal subordinate officers. And what does that mean, sir? It means just this, if you will analyze it in regard to the experience of the three past years, that four millions of dollars have been expended upon the repairs of the canals and in the collection of canal revenues. This is too much power to give to any one man, unless it shall be regulated by law, and the law itself specify in what manner the duties shall be discharged by the officer. These canals of ours extend through nearly one-half of the counties of this State; they run through thirty-two counties. And this man will have a political power and a financial power which may control, to a large extent, the policies of the State and the canal revenues of the State. I am unwilling to give to any one man any such power as this, albeit I desire to accomplish some reform in some way which will require a proper supervision of the Legislature over these matters.

Mr. PROSSER—I would suggest to the gentleman, whether by inserting two words it will not accomplish what he desires, and be to the satisfaction of all: to insert the words "by law," so it will read, "shall be vested by law."

Mr. E. BROOKS—That only gives the Legislature the positive power, and requires the Legislature to impose these duties upon him, and clothes him alike with constitutional and legislative power, to do this very thing to which objection is being made.

Mr. ALVORD—I will ask the gentleman from Richmond [Mr. E. Brooks] whether, if we insert directly after the word "vested" the words "under the direction of the Legislature," it will not meet the case exactly?

Mr. E. BROOKS—Perhaps it might; I am willing to do any thing which will give the Legislature control of this man in the administration of this trust. Whatever will accomplish that, I am willing to agree to; but it seems to me, what is proposed as an amendment by the gentleman from Erie [Mr. Prosser] does not accomplish the result. I want some thing inserted which relates to the execution of the law, which will give the Legislature control over the management of the canals.

Mr. BICKFORD—Suppose you strike out the words "control of all matters relating to" and insert "the execution of all laws."

Mr. E. BROOKS—That will do, perhaps, to give this superintendent the execution of all laws as they may be passed by the Legislature.

Mr. BICKFORD—All laws relating to the repairs, etc.

Mr. E. BROOKS—I am willing to agree to any such amendment as that, and it strikes me as absolutely necessary, because every man must realize there is a great temptation in an office like this; I do not care how pure a man is, or how capable a man is, if you place all the power in his hands, he has a temptation, day by day, to violate his duty as a public officer, and it should

be the duty of a Constitutional Convention—its highest duty, its first and greatest duty—so to provide legislation that a man shall not be led into temptation, in order that he may be delivered from evil.

Mr. CONGER—I think I can make a suggestion which will meet the wishes of gentlemen who have opposed the verbiage of the report of the committee. The difficulty is in the use of the word "vest." The Constitution vests all executive power in the Governor, and it is because the executive power is vested in the Governor that he removes these subordinate officers who are officers of administration. We shall accomplish the desired end if the language of this section is made to correspond with the language of the section recommended by the Committees on Education and Prisons, etc., and say that this officer shall have charge of certain things. Say that he shall have charge and superintendence, but do not allow the Constitution to vest a power in him, for if it is vested in him, how are you going to take it out of him or take it away from him? It can only be by a process of impeachment, and not by a process of removal. I think the language "he shall have charge" of all the matters specified in the article, with a clause added, giving the Legislature sufficient control over his action, would answer every purpose. Now that I am up, I wish to say it appears to me that there would be some propriety in making the commissioners of the canal fund a board who would act concurrently with the superintendent, and give him the benefit of their advice and counsel. I would prefer to have this read: "He shall have, under the advice of the commissioners of the canal fund, charge of all matters relating to the repairs, keeping in navigable order the canals, and of any improvements which may be authorized by law," and so on. I would ask the honorable gentleman from Onondaga [Mr. Alvord] if he sees any difficulty in making the action of the superintendent of public works concurrent with or dependent in some measure upon the advice or assistance of these superior officers, the commissioners of the canal fund?

Mr. ALVORD—The gentleman asks me a question. I will endeavor to answer it. It was the very intention of the Committee on Canals, in reference to this matter, not to hamper this officer in regard to these matters with that advice. That divides the responsibility at once. If the committee and the Convention are not of the opinion that this power should be given to, and the responsibility undertaken by, one individual, why then they must say so; but so far as regards the Committee on Canals, they were unanimously of the opinion that this is the only true course with regard to this matter. I will say further, inasmuch as I understand the gentleman from Steuben [Mr. Spencer] declines to withdraw his proposition (I trust it will be voted down), I will myself offer an amendment to meet the views of the gentleman from Rockland [Mr. Conger], and I think the views of other gentlemen, so it will read "He shall have, under the direction of the Legislature, the control of all matters," etc.

Mr. CONGER—Very well; I consent to that.

Mr. E. BROOKS—I would suggest to the gentleman from Steuben [Mr. Spencer], and perhaps it would meet the views of the gentleman from Onondaga [Mr. Alvord] and from Rockland [Mr. Conger], whether he will not accept of an amendment, so it will read: "He shall have charge of the execution of all laws relating to repairs," etc. In other words, striking out the word "vested," and inserting the word "charge;" striking out the word "control," and inserting the word "execution;" and striking out the word "matters," and inserting the word "laws."

Mr. SPENCER—I should prefer not to accept that suggestion, having a purpose in the peculiar language which I have adopted in the amendment I have offered.

Mr. ALVORD—I am entirely willing, so far as I am concerned, to adopt the language used by the gentleman from Richmond [Mr. E. Brooks]. I see no particular difference in the meaning of the words "vested" and "charge." I desire merely to express, if it is not sufficiently done in the article itself, the idea that this officer is an executive officer, carrying out the law of the Legislature, and if it is thought advisable to put it in the very words, I have no sort of objection, and had as lief take the language used by the gentleman from Richmond as that which I suggested.

Mr. SPENCER—I offered this amendment, in the first place, following a precedent, one that has sometimes seemed to have some authority here; and that is article 5, section 6, of the present Constitution. After prescribing several officers to be chosen, and authorizing certain boards to be composed of those officers, the section goes on and provides:

"The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are, or hereafter may be, prescribed by law."

It seems to me that the true theory under which we should construct or reconstruct a government for this State should be the vesting of the powers of the government in the several recognized departments, the executive, the legislative and the judicial; and that when we have done that, and have prescribed the general mode of proceeding and form of government for the several departments, we have completed our whole duty, and that whenever we go beyond that we usurp the functions of the Legislature. I have offered this amendment with the view to have this committee say by their vote whether they are willing still further to deprive the Legislature of this power over the several subordinate, not principal, departments of the government; for this office which it is proposed to create here is one of the subordinate departments of the government. There is a peculiarity, I am aware, in the language I have used in my amendment. I am aware that it is in direct conflict with the theory upon which the Committee on Canals propose to construct the government in reference to this subject. It seems to me, we have gone far enough in belittling the legislative department of the government. I believe, in its sphere, it should be supreme, as all other respectable governments are; and we never can have a respectable government unless we bestow upon it the power and the dig-

nity and the character essential to make it respectable. And allow me to say here that the reason why the Legislature in the past has so little respectability and so little character, in the estimation of this Convention, is because the Constitution of 1846 goes so far toward depriving it of power.

Mr. ALVORD—I am very glad indeed, sir, that the gentleman from Steuben [Mr. Spencer] has taken this position, because we might as well meet it now as at any time during our sittings here as a Convention. I hold, sir, that the Convention of 1846 did not go far enough. They went just so far as regarded the *spirit* of the Constitution made by them, to do the very thing we here intend to do in words, and it is because of the fact that they failed to do it in words, that the Legislature of this State, ever since 1846, have been the Constitution makers of the State, violating, in terms, in spirit, if not in letter, the Constitution as it was made in 1846. It is for the very intention of taking away from the Legislature this power of creating offices, and because, sir, by the terms of the very proposition made by the gentleman from Steuben, the Legislature heretofore in this State have decreed by their acts that they had the right to deprive the boards which were made for certain purposes of the power to perform those purposes, and have created other offices to do the work. Upon the very provision he has read, in the Constitution of 1846, has been effected all the innovations and usurpations of the Legislature in this regard. Your banking bureau, your insurance bureau, your superintendent of public instruction bureau, your auditor's bureau, are all creations of the Legislature, in violation of the spirit of the Constitution of 1846, all under this very provision which the gentleman has been reading. The excise commissioners of New York, and all that sort of thing, are in violation of the spirit of that Constitution, and of the intentment of that Constitution, and now, forsooth, the gentleman wishes to fasten it upon us again. I trust the good sense of this Convention, seeing the evils of the past in this direction, will not permit the Legislature to set itself up as Constitution maker in the State, and that any such attempt will be put an end to by adopting a general sweeping provision, that while they have the right to prescribe by law what shall or shall not be done by a particular department, they shall have no right to deprive that department of the right to execute the laws after they are made, and to erect some other office of their own motion and by their own laws for the purpose of performing the duty.

Mr. PROSSER—There has been quite a portion of the time of this Convention, during the long discussions in this committee, expended in detailing and talking about the very bad management of the canals at the present time. The amendment under consideration proposes to leave the matter precisely where it is now; so far as the power can go. The Constitution of the State directs that three canal commissioners shall be elected, but gives them no power—it left that entirely to the Legislature. We have had twenty years' experience of purely legislative manage-

ment of the canals of this State. If what is said in regard to the management be well founded—if they have been mismanaged as has been represented here, it is because the Legislature have not properly performed their duty in this regard. I do not, as one of the humble members of the Canal Committee, have very large expectations of any improvement in relation to the management of this State property. Among the reasons which induced me to subscribe to this report, and prominent among those reasons, was the provision for this, as I think, necessary concentration of power. If it be necessary and wise for the State to hold this property and manage it, it is, in my judgment, indispensable to a tolerable management, which is all I expect, to concentrate the power in one head. I grant you, sir, it is a large power, and like power everywhere, susceptible of abuse. We cannot have the good of concentration of wisdom and integrity, without hazarding the evil of a bad man. I do not, so far as I know about the management of the canals of this State, join to a very great extent in the clamor about their bad management. I do think, however, so far as I know, there is a fair probability that some improvement, perhaps considerable, may be had from the report of the Canal Committee, if it shall be sanctioned by this committee and by the Convention. Because, sir, first, in my judgment, the Governor will be held accountable for this vast power conferred on the man of his choice. He cannot, and ought not to escape from it, and the community will not permit him to, if he would. I am unwilling that this matter shall be left precisely where it was, and the amendment of the gentleman from Steuben [Mr. Spencer], if I understand it rightly, does leave it precisely there. We might as well, and perhaps better, go back to the three commissioners. There has been a great deal said about the magnitude of this power. To be sure it is a large power, but the total disbursement does not equal, in point of money, that of many a manufacturing establishment; and it is much inferior to a moderate sized railway, with some of which I have been connected for many years, and we have not found it very difficult to get a man capable to manage that railway, where the disbursements are twice what they are here, and who would attend to all the little details of it every day, and know all about it. And this duty can be done when the man you put at the head of it learns his trade. That is the reason I have been opposed to the short term of four years; if a man could be educated when you get him, he might do a great deal of good in four years; but if he has got to learn his trade, then not very much. But I hope for the reasons which I have stated, that the amendment now offered may not prevail.

The question was put on the amendment of Mr. Spencer, and it was declared lost.

Mr. E. BROOKS—I now offer the amendment which I suggested, to strike out the word "vested" and insert the word "charge;" strike out the word "control," and insert "execution," and strike out the word "matters" and insert "laws," so it will read: "He shall have charge of the execution of all laws relating to repairs and keeping in navigable order," etc.

Mr. BICKFORD—I would suggest to the gentleman from Richmond, [Mr. E. Brooks], that his amendment renders necessary a further change of the verbiage. I offer this, which I think will meet his views:

"He shall have charge of the execution of all laws relating to the repairs and keeping in navigable order the canals, and with the making of any improvements that may be authorized by law and he shall, subject to the control of the Legislature, prescribe the rules to govern the navigation of the canals."

Mr. E. BROOKS—I think that is a mere repetition of the idea; I think my own amendment covers all that is expressed by the amendment of the gentleman.

The question was put on the amendment of Mr. E. Brooks, and it was declared adopted.

Mr. CONGER—I move now to strike out the words, "keeping in navigable order," and insert the word "navigation." The phrase "keeping in navigable order" was proper enough with reference to the word "matters" going before it, but now that we have inserted the word "laws," this amendment will make the sentence more perfect.

The question was put on the amendment of Mr. Conger, and it was declared carried.

Mr. BICKFORD—I now offer an amendment to strike out in the seventh line, "all the rules to govern their navigation" and insert, "he shall subject to the control of the Legislature, prescribe the rules to govern the navigation of the canals." As this stands now, he may prescribe rules to govern the navigation of the canals, absolutely, without any control by the Legislature.

Mr. ALVORD—No, he cannot; that is not so at all.

Mr. BICKFORD—As it stands now, he has charge of the rules and government of the navigation of the canals; it is absolutely vested in his hands, without any control of the Legislature, if I can understand language, and it is necessary to insert this amendment in order to give the Legislature control over him in that respect.

Mr. E. BROOKS—I will suggest a change, so that it may read in this way: "and keeping in navigable order the canals, and making any improvement that may be authorized by law." I think the gentleman would better content himself with striking out.

Mr. BICKFORD—"Authorized by law" relates to the improvements; but nothing is said about the rules for the government of the navigation of the canal. That power is entirely vested in him, to act arbitrarily without any control of the Legislature. I propose to amend so that it shall read, "and he shall, subject to the control of the Legislature, prescribe rules for the government of the navigation of the canals." It must be obvious that, without this amendment, he would possess absolute control, without any supervisory power in the Legislature. This amendment gives the Legislature supervisory control in the matter of prescribing rules and regulations for the navigation of the canals.

Mr. PROSSER—This latter branch, proposed by the gentleman from Jefferson [Mr. Bickford] to be

amended, only places the same power with the superintendent of public works, which is now placed by law with the canal board, to make the necessary rules for the navigation of the canal. It seems to me that that is not of a character that ought to excite alarm anywhere. It is a very simple matter. It needs a man of good judgment, and acquainted with canals, to make good, and suitable rules to govern their navigation, a matter which the Legislature can know but very little about. If the gentleman means that the Legislature shall make the rules and this man carry them out, I am very much opposed to it. If he only means that the Legislature shall authorize the superintendent to make the necessary rules, I have no objection to that.

Mr. BICKFORD—I suppose it might be a possible thing that this officer might prescribe rules for the navigation of the canals, which would be unreasonable, and which would be regarded as highly objectionable by the people and by the Legislature. If so, I ask that the Legislature may exercise a supervisory control over him and say that those rules which he has prescribed shall not obtain, but that different rules shall. That is the idea.

Mr. E. BROOKS—I am opposed to this idea. I do not think it at all necessary. If the gentleman will read the sentence consecutively, he will see that the Legislature does just what he says it has no power to do. The conjunction used controls the whole language, and shows that it is a matter of regulation by law. Let us read it properly, and see if that is not what it means: "He," that is, the superintendent, "shall be charged with the execution of all laws relating to the repair and keeping in navigable order the canals, and any improvement that may be authorized by law." This is one thing; and then comes the sentence, "and of the rules and government of their navigation." Certainly, the last branch of that sentence is as much under the control of the Legislature as the first part or second.

Mr. BICKFORD—Suppose we strike out the first and second clauses; how will it read? "He shall be charged with the execution of all laws, and all the rules and government of their navigation." If you leave out the first two clauses, that is the way it would read; and that does not make sense.

Mr. E. BROOKS—You might strike out the words, "and of" in the sixth line; but perhaps it would be better to have it remain as it is. I insist that the sense is good and the object is plain, as expressed in the amendment, although I do not think it absolutely necessary that this last clause should be inserted at all, because I think that may be covered by the first two clauses, in the fourth, fifth and sixth lines. But if any amendment is necessary, I would suggest to the gentleman to strike out "and of" in the sixth line.

Mr. HARDENBURGH—I desire to ask the gentleman from Richmond [Mr. E. Brooks] whether he desires, by this constitutional article, that the Legislature shall prescribe the rules and regulations governing the navigation of these canals, or that the commissioners, or board, or superintendent shall do it. As the article now stands, amended,

I claim that the superintendent is charged with the execution of laws passed by the Legislature prescribing the rules and regulations. I do not myself desire that the Legislature shall prescribe the rules and regulations that are to govern and control the management of the canals. I desire that to be put into the hands of the superintendent.

Mr. E. BROOKS—With regard to that, every thing depends upon the construction which may be put upon "the rules and government of their navigation." I suppose the Legislature may give the superintendent power over those subordinate rules regulating the government of the canals. I think the amendment might as well end at the word "law" in the seventh line, leaving out the last clause of the sentence. I think if that is omitted, the whole of this matter is covered. I would move to leave it out, were it in order to move an amendment at this line. As the gentleman from Jefferson has moved to strike out and insert, no division of the question can be called for under the rules. But if the gentleman will withdraw his amendment, I will then move to strike out all after the word "law."

Mr. BICKFORD—As the language now stands, I insist that if the idea of the gentleman from Ulster [Mr. Hardenburgh] should prevail, the officer would have the entire control of this matter, subject to no revision by the Legislature. But as I propose to alter it, the Legislature could supervise his action, and if they found fault with it, could amend it.

Mr. HARDENBURGH—As the article now stands, it is precisely, I understand, as you desire. The Legislature has control over the whole thing.

Mr. BICKFORD—As I propose to alter it, the Legislature would certainly have the control over it; would they not?

Mr. HARDENBURGH—Quite likely; and it would make it so much worse than it is now.

Mr. BICKFORD—Let us obviate any doubt that may exist. If we wish the Legislature to have control over that matter let us say so.

Mr. ALVORD—I hope the proposition of the gentleman from Jefferson [Mr. Bickford] will be voted down, and then we shall come directly to the point of the alteration made by the gentleman from Richmond [Mr. E. Brooks] in relation to the rules for the navigation of the canals, which ought, as a matter of necessity, to be in the hands of the superintendent, and not in the hands of the Legislature. I propose, therefore, after voting down the gentleman's proposition, to amend by saying that he shall make rules and regulations for the government of the navigation of the canals.

Mr. BICKFORD—And to that I would propose to add, "subject to the supervision and control of the Legislature." That is my idea.

The question was put upon the amendment offered by Mr. Bickford, and it was declared lost.

Mr. ALVORD—I now move to amend in the seventh line, by striking out, "and he shall make rules and regulations for the navigation of the canals."

Mr. REYNOLDS—I would suggest to the gentleman from Onondaga [Mr. Alvord] whether this phraseology would not suit him; to insert after the word "canals," "of their improvement,

and of the rules and government of their navigation, as shall be prescribed by law;" putting the phrase "as shall be prescribed by law" after the rules for their improvement and the government of their navigation.

Mr. ALVORD—I object to the gentleman's proposition, because it is exactly the proposition which has just been voted down.

Mr. BICKFORD—I wish to say that if this amendment is adopted, the whole control of that matter, of the rules and regulation with regard to the canals, is undoubtedly vested in this officer, and the Legislature cannot revise any rules, however absurd and arbitrary they may be, which he may make. Do gentleman in this Convention wish to vest in any officer the power to make absurd, arbitrary and oppressive rules for the navigation of the canals of this State, and to give the Legislature no power whatever to supervise his action and control it? It seems to me that we would be insane, almost, to give any such power as that, which the Legislature cannot control and supervise or alter at all.

Mr. ALVORD—Under the present regulations, the Legislature have not the remotest thing to do with the regulation of the navigation of the canals, and they never have heretofore interfered. It has been done by the canal board. It has simply to decide which boat shall drop its line going east or west, loaded or light; whether they shall tie up on the heel-path or the tow-path; whether they shall enter any lock with reference to another boat at a certain distance or not; and the shape of the bow of the boat; matters of no sort of importance so far as the Legislature is concerned, but still important in the navigation of the canal in regard to the facility of navigation and the passage of property over it. That is all there is about it. I would ask the question—who it is that makes the rules for the court, is it the Legislature or the court?

Mr. BICKFORD—Will the gentleman allow me to ask him a question?

Mr. ALVORD—Certainly, sir, and I will answer it if I can.

Mr. BICKFORD—Cannot he prescribe under this head of the rules for the navigation of the canal, that one class of boats shall have preference to another?

Mr. ALVORD—The canal board do now.

Mr. BICKFORD—If there is an oppressive rule with regard to that, should not the Legislature have power to interfere?

Mr. ALVORD—I ask the gentleman whether it is not the law, that the officer can be removed if he undertakes to violate that which is clearly and indisputably right in the premises upon a question like that?

Mr. BICKFORD—If the officer does his duty, according to the Constitution, I do not know how you can remove him.

The question was put on the amendment offered by Mr. Alvord, and it was declared carried.

Mr. COOKE—I move to amend by striking out the word "eight" in the third line and inserting "five." The object of the change we are about to make, with regard to the canal management, I understand to be to place the management of the

canals under some one responsible head, instead of having the responsibility divided as it has heretofore been; to place the responsibility upon some one man to whom we can look to properly discharge that responsibility. Now, the question is whether we are not, by prescribing so long a term of office, defeating the very object we have in view? This section proposes that the superintendent shall be appointed by the Governor, with the advice and consent of the Senate. We have already fixed the term of office of the Governor at two years, and of the Senators at four years. Now, I would like to know to whom this officer is to be made responsible and who is responsible for him. There ought to be some one to whom he shall answer for the manner in which he has discharged his duties. We would ordinarily look to the Governor for the conduct of one of his appointees. We hold the Governor responsible. But here the Governor is elected, appoints his superintendent, goes out of office, and perhaps into his grave. Six years afterward, perhaps, this superintendent is guilty of some misconduct or peculation, and, in that case, where is his responsibility? To whom does he respond? Who is his master? The people have not elected him. The people would look round for the man who was responsible for his appointment, for his honesty and fidelity. That man has retired into private life, or into his grave. Would not the officer necessarily feel that degree of independence that is altogether unwholesome to the public interests? I would have preferred a still shorter period. I would have preferred four years, and perhaps two years. I would have preferred to have his term of office fixed and made no longer than that of the power that appoints him; but the proposition to fix it at four years has been voted down, and at the suggestion of some friends, I now make the term, by this amendment, five years instead of a less term. It seems to me that this is a matter that deserves careful consideration. We may go on and create an independent head of the canal management by this means, but I think, sir, it is just as important that we should make that head responsible to some power as it is that we should make the head single.

Mr. ALVORD—I believe, sir, that the Comptroller of this State is elected by the people. To whom is he responsible? Is not he responsible to the Governor of the State under the Constitution, by way of impeachment? Under the terms of this section, we make this party responsible, not only to the Governor, but, upon the recommendation of the commissioners of the canal fund, the Governor is bound to put him on trial for removal for manifest cause. The Governor of the State of New York never dies. The individual who holds the office may. The Governor of the State of New York is always in existence. The commissioners of the canal fund are always in existence; and if this man, by incompetency, neglect, or malfeasance in office, brings himself within the meaning of the Constitution, the commissioners of the canal fund can recommend his removal, and the Governor is bound to remove him, giving him opportunity to show cause for not being so removed.

Mr. COOKE—I would like to ask my friend a single question, whether he thinks our present Governor would feel the responsibility of one of the appointees of Governor Seymour during his term of 1863 and 1864, as he would if the appointment had been his own?

Mr. ALVORD—I think, if the Governor of the State of New York should fail to do his duty, whether it was the appointee of the Governor before him or his own appointee, he would be doing that which would not meet the approbation of the people of this State. I do not care whether the superintendent is appointed by the Governor or some one else, so far as this motion is concerned. The Governor is bound, upon the recommendation of the commissioners of the canal fund, whether he is his appointee or not, to have him removed or suspended from office, giving him the opportunity to be heard in his defense. And that is all we can ask in this regard. I do not desire to reiterate arguments here, because it seems to me that it must be perfectly plain and patent to every one, that with this term and duration in office, two years, it would only amount to subjecting the State to the expense of constantly educating this set of men, because by the time you have educated them, at the expense of the State, you turn them out. It is the curse—I speak honestly of this matter, and as I feel—it is the curse of our system that very many of these offices that ought not to be considered at all in a political bearing, are of such short duration, that it has cost the people of this State untold sums of money to educate men to office; and when they get educated, by some political turning round they are turned out of office, and the State has to go to work and educate a new set of men. I hope in this regard that this will not be looked at as a political office, but simply as an office of business, the care and regulation of the canals; and I hope we shall not be constantly under the necessity of educating men for that position.

Mr. COOKE—One word in reply to the gentleman who has just taken his seat. He supports the long term principle on the ground that it will have the effect of educating men for this position. A man is appointed; he shows an adaptation to the business; he shows himself competent, and faithful, and honest. The probability is, that being chosen for five years, and serving five years, he would receive a re-appointment. It is not to be presumed that he would be turned out at the expiration of his first term. The gentleman himself has illustrated this matter by referring to the repeated re-election of judges under the existing Constitution.

Mr. ALVORD—Will the gentleman allow me to ask him a question?

Mr. COOKE—With pleasure.

Mr. ALVORD—I would ask if the present Governor of this State should happen to appoint a man to this office for the term of five years, and if, at the end of five years, a Governor of the Democratic school should happen to be in office, in the State of New York, whether any question of the fitness of the incumbent would enter into the question of renomination?

Mr. COOKE—It would if the Governor honest-

ly discharged his duties. If he could not get a man of his own party as competent, he would be guilty of dereliction of duty as Governor if he did not re-appoint. Furthermore, the article under consideration provides for several assistant superintendents. These assistants are being educated all the while to take the place of their chief. I do not believe there will be any difficulty in finding men competent to fill the place. I do not think the matter of mere practical experience, in any particular position, has heretofore entered very largely into the reasons for appointment, or that it ever will. Now, another thing. I admit that it is the duty of the Governor to remove a superintendent under this section who has been unfaithful, or who has improperly performed the duties of his office. That is not the question I was arguing. If the appointee feels responsible to some existing power, it may be that a sense of gratitude to the Governor who appointed him, and the Senate that confirmed him, will impose upon him additional obligations for the honest and faithful performance of his duties. But when he sees a Governor, and perhaps a Senate, different in politics from those who appointed him, he would not feel so oppressed with the obligations of duty as though he were watched and looked after by the friends who had given him the office and stood responsible for his conduct. And perhaps he would be willing to be removed after he had made a fortune by speculation and dishonesty in his official career.

Mr. LANDON—I am in favor of the motion of the gentleman, but would like it still better if he would reduce it from five years to two. This office, it strikes me, is one of the most dangerous we can constitute; the most dangerous because the most powerful. The superintendents of public works will have the appointment of a large number of subordinate officers. These men will probably be politicians; all through the State they will attempt to control the political nominations of the party to which they belong. This officer, regarded in a political view, might perhaps better be called the superintendent of the politics of the State than the superintendent of public works. Bad men, corrupt men in the State will try to gain this office. I think if we are to give this officer such great power, we certainly ought to reduce the term of office so we may have a change, at least not be always controlled by a man who will be able to keep himself in office and perpetuate his own power. I think it would be much better to reduce the term to two years.

The question was put on the amendment of Mr. Cooke to strike out "eight" and insert "five," and it was declared carried.

The question recurred on the motion of the gentleman from Kings [Mr. Bergen] to insert the third section of the minority report of document eighty-six in place of the section under consideration.

Mr. LANDON—I move to strike out the word "five" in the third line and insert in lieu the word "two" for the reasons just given.

Mr. BICKFORD—I hope that amendment will prevail. As often as the Governor comes into office he should have the control of that officer. If he is to have the appointment of him at

all, he should have the privilege of a selection every two years. The general theory is that the party which carries the State should control the public affairs of the State. When that party to which I am opposed carries the State the people are with them, and I want them to control the public affairs. When the party to which I belong carries the State the people are with us; then I want that the party to which I belong should have control of the affairs of the State. And the more I can do toward that end, the better. I therefore favor this amendment for the reason that when a Governor is elected he shall be able to select a superintendent of public works whose opinion shall accord with his own, and whose policy shall run even with his own. This is the true principle. If he is a good officer, and is of the same political views as the Governor, he may be retained; if not, he can be removed, and another appointed without going through the form of charges, or any thing of that kind. Perhaps there may be no charges that can be substantiated against him, and yet, when one officer's term has expired another can be appointed in his place without any invidiousness. After an experience of two years it may be found there has been a mistake in his selection, although he may have been supposed a proper officer at the time of his appointment, and the Governor should have power to remove him if it is necessary.

The question was put on the amendment of Mr. Landon, and it was declared lost.

Mr. COOKE—There is no further amendment in respect to the term of office of the assistant superintendent, in line twenty-three. I move to amend by striking out the word "eight" and inserting "five."

Mr. SPENCER—I wish to make a suggestion to the gentlemen of the Canal Committee, whether it would not be better if the assistant superintendents were so classified that there should be at all times some one or two of them in office who are acquainted with its duties.

Mr. ALVORD—I would suggest that the very idea of four assistant superintendents is to have some one continually in charge who know the duties of the office. These assistant superintendents would act in the capacity of superintendents in directing the supervision of canals in particular localities.

The question was put on the amendment of Mr. Cooke, and it was declared carried.

Mr. ALVORD—I would suggest to the gentleman from Kings [Mr. Bergen] that he modify his motion to substitute his section and amend it in the body, as this has been simply putting the naked proposition before us whether this officer shall be elected or appointed.

Mr. BERGEN—I can make it as suggested, and gain the point I had in view. I will consent that it shall read that the office shall be elective instead of appointive.

The question was put on the amendment of Mr. Bergen, and, on a division, it was declared lost, by a vote of 25 to 36.

Mr. BERGEN—There is no quorum voting.

The CHAIRMAN—There has no quorum voted. Gentlemen will please vote.

The question was again put on the amendment

of Mr. Bergen, and, on a division, it was declared lost, by a vote of 23 to 40.

There still being no quorum voting, and no objections being made, the amendment was declared lost.

There being no further amendments, the Secretary proceeded to read the fourth section as follows:

SEC. 4. The canal board, the contracting board and the powers and duties of the office of State Engineer and Surveyor, as applicable to the canals, are abrogated; the office of canal commissioner and canal appraiser are hereby abolished, to take effect on the first day of January, eighteen hundred and sixty-eight. The canal commissioners and canal appraisers in office at the time of the adoption of this Constitution, may hold their respective offices until and including the thirty-first day of December, eighteen hundred and sixty-seven, and no longer.

Mr. E. BROOKS—I would suggest to the gentleman having charge of this bill that these dates will have to be altered.

Mr. ALVORD—I propose to alter the first date, "1868," and make it "1869," and the last date, "1867," and make it "1868."

There being no objection it was so amended.

Mr. SPENCER—I would suggest that it be so amended as to provide that the corresponding officers, under the existing Constitution, shall continue in office until the officers in the new Constitution assume their functions.

Mr. ALVORD—Inasmuch as the action of this Convention already passed in affirming and putting into the hands of the Committee on Revision the offices of State Engineer and Surveyor has been followed, as far as we can follow it, I move to strike out in the first line, after the word "board," down to and including the word "canals," in the third line, so that it will read, "the canal board and the contracting board are abrogated." I will state to the gentleman from Steuben [Mr. Spencer], in regard to his suggestion that there is now an article before the Convention, I think, establishing a court of claims. Some committee, I forget what one—

SEVERAL MEMBERS—On Powers and Duties of the Legislature.

Mr. ALVORD—Reported it, and it was passed by the Convention.

Mr. SPENCER—My suggestion had reference to the canal commissioners and canal appraisers. The proposition contained in the article proposed by the minority of the Canal Committee, it seems to me, would belong properly to the preceding document: "Until the election of the superintendent of public works as herein provided, the canals of this State shall remain in charge of the officers," etc. I move to amend by striking out the sixth, seventh, eighth and ninth lines, and substituting in place of them the thirty-eighth, thirty-ninth, fortieth, forty-first and forty-second lines of document 86, page 6.

Mr. ALVORD—I cannot see why the proposition as made by the Committee on Canals is not correct. It leaves officers to go out on a certain day, and two officers to come in. There is this objection to the proposition of the gentleman from Steuben [Mr. Spencer]. In the event of this

Constitution being submitted to the people next fall and being accepted by them, the superintendent of public works not being appointed until the winter following, would be the means of keeping in office members of the canal board until the thirty-first of December of that year.

Mr. E. P. BROOKS—Suppose it should so happen that the Governor and the Senate should not agree upon the fitness of a proposed nominee for the superintendence of the public works. Suppose the Governor on the second day of January, two days after his inauguration, sends to the Senate the name of some gentleman to be appointed to the office; suppose the Senate should not agree with him as to the propriety of appointing that man, and they should continue so to think during the entire session, you have constitutionalized your canal commissioners out of office without having any one to take their place. I think the suggestion of the gentleman from Steuben [Mr. Spencer] is proper, until a successor takes the place, the commissioners should exercise the duties of the office. It has happened in the history of the canals of this State that the Governor and the Senate did not agree in regard to the appointee. I believe the present canal appraisers were all appointed at the same time and will go out at the same time, whereas it was the intention of the law that they should go out in alternate years. It may again occur that the Governor and the Senate cannot agree. I think the gentleman's amendment should stop at the word "same" in line forty.

Mr. SPENCER—I will accept any amendment the gentleman may make so as to meet the case of the canal appraisers.

The question was put on the amendment of Mr. Spencer, and it was declared carried.

The question was put on the motion of Mr. Alvord to strike out, and it was declared carried.

Mr. KETCHAM—I move that the committee do now rise and report progress.

The question was put on the motion of Mr. Ketcham and it was declared carried.

Whereupon the committee rose and the PRESIDENT resumed the chair in Convention.

Mr. WEED, Chairman of the Committee of the Whole, reported that the committee had had under consideration so much of the article of the report by the Committee upon Canals as relates to the care and management of the Canals, had made some progress therein, but not having gone through therewith had requested their Chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave and it was declared carried.

On motion of Mr. MERRITT, the Convention then adjourned until to-morrow at 9 o'clock, A. M.

FRIDAY, November 15, 1867.

The Convention met pursuant to adjournment. The Journal of yesterday was read by the SECRETARY and approved.

Mr. GOULD—I ask leave of absence for Mr. Pond, of Saratoga, until Wednesday morning next, and for Mr. Merrill, of Wyoming, for one week.

No objection being made, leave of absence was granted.

Mr. BARTO—I demand a call of the roll.

Mr. E. BROOKS—I hope that my friend will withdraw that demand. If it is in order, I would say that the Committee on Rules will make a report this morning, recommending that we meet hereafter at ten o'clock in the morning instead of nine, as it is quite impossible to get a quorum here as early as nine o'clock.

Mr. BARTO—I will withdraw the demand.

Mr. PRINDLE presented a remonstrance from the trustees and principal of the Cambridge and Washington Academy, and also a remonstrance from the trustees and teachers of the Greenwich Academy, against abolishing the office of Regents of the University.

Which were referred to the Committee of the Whole, having the subject in charge.

The PRESIDENT presented a communication from Emmons Clark, secretary of the metropolitan board of excise, which was read and referred to the Select Committee on Adulterated Liquors.

The PRESIDENT also presented a communication from Thomas C. Acton, president of the board of metropolitan police commissioners, which was read and ordered printed.

Mr. ARCHER, from the Committee on Rules, made the following report:

The Committee on Rules, to which were referred sundry resolutions relating to the rules of the Convention, would respectfully report, in part, as follows:

1. Add to Rule 6, "Absentees shall not be called more than once, except in the absence of a quorum."

2. Amend Rule 36 by striking out the word "fifteen," and insert the word "twenty."

3. Additional rules.

1. Equivalent propositions shall not be entertained.

2. No amendment shall be received while another is pending, unless it be an amendment to the amendment, and germane to the subject.

3. Until otherwise ordered, the hour of meeting shall be at ten o'clock in the morning; the session continue until two o'clock in the afternoon, when a recess shall be taken until seven o'clock in the evening.

Mr. ARCHER—The committee would add that several propositions of a stringent character, proposing amendments to the rules, were before them, and are held in abeyance for the time being. It was believed that from the manner in which business has been conducted for the last two days, it might not be necessary to make any more stringent rules; but if it should become necessary in the progress of events, the committee will so report.

Mr. A. J. PARKER—This report contains several new provisions of great importance, and I therefore move that it lie on the table and be printed.

The question was put on the motion of Mr. A. J. Parker, and it was declared carried.

Mr. GOULD—Many members of the Convention have come here with the understanding that we shall adjourn to-day, and have made their arrangements accordingly, so that probably a

large number of those now present will be absent this afternoon. I have received assurances from those who are here, and from many who are absent, that if an adjournment is made to-day, we shall probably next week be able to preserve a quorum during the whole time. I, therefore, offer this resolution:

Resolved, That when the Convention adjourns, it adjourn until seven o'clock P. M., on Monday next.

The question was put on the resolution of Mr. Gould, and it was declared carried.

Mr. A. J. PARKER offered the following resolution:

Resolved, That the Attorney-General of the State be requested to communicate to this Convention his opinion as to the power of this Convention to act longer under the law of the Legislature of 1867.

Which was laid over under the rule.

Mr. ALVORD—I understand that there is a great desire upon the part of the members of the Convention that, when we come to discuss the last section that remains in the report of the Committee on the Care and Management of the Canals, there should be a full attendance. In consequence of that fact, and of the sparse attendance here now, I think it would be quite useless for us to go into this unfinished business at this time. I, therefore, move that the Convention do now adjourn.

Mr. HARDENBURGH—Will the gentleman withdraw his motion for a moment? I desire to be excused from attendance on Monday next and for a couple of days thereafter, in consequence of ill health.

No objection being made, leave of absence was granted.

Mr. A. J. PARKER—I wish the gentleman from Onondaga [Mr. Alvord] would consent to postpone this motion of his, to enable me to ask that this resolution that I have offered, may be now considered.

Mr. S. TOWNSEND—A resolution of the same import has already been offered by Mr. Brooks.

Mr. ALVORD—When that resolution comes up for consideration, I shall feel imperatively compelled to vote to lay it on the table; and therefore I cannot withdraw my motion to adjourn.

The question was put on Mr. Alvord's motion to adjourn, and it was declared carried; ayes 39, the noes not being counted.

So the Convention adjourned.

MONDAY, November 18, 1867.

The Convention met at seven o'clock P. M. pursuant to adjournment.

Prayer was offered by Rev. P. J. SMITH.

The Journal of Friday was read by the SECRETARY and approved.

Mr. SMITH presented the memorial of certain citizens of Fultonville praying for the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. S. TOWNSEND—I desire to offer to be laid on the table, to be called up at the motion of

the mover, the following resolution, It only expresses what we are daily saying to each other informally:

Resolved, As the mature opinion of this body, that in any amendments that may be submitted by the Convention for the consideration of the electors of this State, the article upon suffrage shall be separately voted upon.

Which was laid on the table.

The Convention again resolved itself into Committee of the Whole on the report of the Committee on Canals, Mr. MERRITT, of St. Lawrence, in the chair.

Mr. SCHOONMAKER—Is it now in order to move a substitute for the third section?

Mr. ALVORD—I would inform the gentleman that we have passed by the third section, and therefore his amendment will not be in order until amendments generally are in order.

The CHAIRMAN—The fifth section is now before the committee, and will be read by the Secretary.

The SECRETARY read the fifth section of the report as follows:

SEC. 5. No moneys shall be appropriated or paid by the State, or out of the canal revenues, for the construction or maintenance of any bridge over any of the State canals or feeders connected therewith, at any point where a bridge was not located and maintained at the expense of the State prior to the first day of January, eighteen hundred and sixty-seven. Nor for any damages or injury sustained in the navigation or use of any of the canals of this State, or feeders or structures connected therewith. Nor for any damage or injury caused by any breakage or defect in any of the State canals, feeders or structures connected therewith. Nor for any damage or injury arising from, or on account of the construction or maintenance of any of the State canals, feeders or structures connected therewith. Nor for any extra allowance or compensation to any person for, or upon, any contract after the services shall have been rendered, or contract entered into. The immunity of the State shall not at any time be waived by the Legislature, or any public officer or body. But nothing in this section contained, shall be construed to prohibit the payment of just compensation for property or water appropriated, provided the demand for such compensation be made within three years after the appropriation.

Mr. SCHOONMAKER—I desire, sir, to make some general remarks in reference to that section. Important as it undoubtedly is to change the entire system for the care and management of our canals, and to eradicate the abuses which have crept into the administration of the present system, these are not the only things necessary to protect our noble system of internal improvements and the immense value thereof from entire destruction. The great and overshadowing evil, which has done more than any thing else to demoralize the people and endanger the ability of the canals to meet the engagements made on their account, has been and is improvident legislation. When the contractors and other harpies upon the canals, have, through canal officials, stolen their hundreds of dollars, they have

through the Legislature, and the principles which have been established by the Legislature within the last few years, filched the State out of hundreds of thousands of dollars. It is necessary for the safety of the State and its credit, that these leaks should be specially stopped, and the Committee on Canals propose to accomplish it by the fifth section of their report. The first clause of the section alluded to, prohibits the future erection and maintenance of bridges, by the State, over the canals and feeders, where they were not erected and maintained prior to the first day of January last. This provision has become imperatively necessary to put an end to the continued application for, and enactment by the Legislature of laws directing the building and maintenance of bridges over the canals and feeders, which have been rendered necessary or proper by the opening of new roads in the country, and the extension and opening of new streets in villages and cities. When the bridges were all wooden structures, built for use and durability, and not for ornament, the expense was not so great, but now, when every bridge must be an ornamental iron structure, their expense bears heavily on the revenues. It is only a short time since, I saw in the published proceedings of the canal board, a final estimate for a new bridge built over the canal in the village of Cohoes, under a special act of the Legislature, passed in 1865. The cost was only \$24,000. As early as the year 1820, in "An act for the maintenance and protection of the Erie and Champlain canals, and the works connected therewith" it was provided in the first section, "that in all cases where a new road or public highway is laid out by legal authority, in such direction as to cross the line of the Erie canal, Champlain canal, or the Salina side cut, after said line is established, and in such manner as to require the erection of a new bridge over either of the said canals, for the accommodation of the said road, such bridge shall be so constructed and forever maintained at the expense of the town in which such bridge is to be situated. Provided however, that no bridge shall be constructed across either of said canals, without first obtaining, for the model and location thereof, the consent in writing, of one of the acting commissioners or the principal engineer of the canal to be intersected by said road." This provision was substantially re-enacted in the Revised Statutes, and is the law of the land at this day, applicable to all the canals. Still, the Legislature have, by almost annually yielding to the importunities of applicants, and the demands of localities, fastened large burdens upon the canal revenues in the construction and maintenance of new bridges under special laws, waiving the above provisions of the general statute. That provision of the general law, almost coeval with the existence of our canals, was just, right, and proper, and should have been invariably adhered to by the Legislature, and the immunity of the State in that respect should never have been waived. That is so, because the great system of public and internal improvement in this State, was projected and perfected, not under the selfish notion of pecuniary gain and emolument to the projectors, but under an earnest, and well

directed desire for the promotion of the public good, and for the development of the resources and improvement of the State. They have wonderfully accomplished such purpose, and created villages and cities, where before there was a wilderness. They have substituted, in numberless places, the hum of the spindle and machinery, for the crack of the hunter's rifle and the woodman's ax. Under such circumstances, although it was right and proper that bridges should be erected and maintained, at the expense of the State, wherever they were rendered necessary by the original construction and location of the canals, still, it is not so where they have since become necessary or proper, by reason of the subsequent improvement of the country, and the planting, growth and increase of villages and cities on their borders. In such cases, the necessities have arisen from the prosperity of the country, started and stimulated by these works of internal improvement, it is true, but still the patron should not be charged and burdened with the expense of his *protege*, because he has furnished him the means of prosperity and success. On the contrary, as to such structures, the canals should be treated as natural water-courses, and cities, villages and towns should be left to make and maintain their own bridges, under proper and suitable restrictions prescribed by law. Experience has taught us that the good nature of the Legislature is too yielding to importunities, and that an absolute prohibition in the organic law is necessary for the protection of the State. I, for one, would be willing to go even further than the report of the committee, and leave the future maintenance of many of the bridges already constructed under special acts, to their respective localities, but I am nevertheless content to leave it where it has been left by the committee. The second clause of the section now under consideration, prohibits the appropriation or payment, by the State or out of the canal revenues, of any moneys for damages or injury accruing while navigating any of the State canals. As I have before remarked, these canals were not constructed for pecuniary gain or emolument, but for the promotion of the public good, and the improvement and development of the resources of the country through which they pass. In that particular, they are distinguished from private works, constructed for private gain and emolument, and thus furnish a different rule of responsibility. The canals having thus been built for the public use and benefit, the people are free to use them or not, as they may think proper, or may feel will best promote their interest. Their use of the canals being thus, entirely voluntary, it is no hardship to require that those using them should do so at their own risk, and take upon themselves all the hazards incident to their navigation. It is right that the Legislature should be relieved from importunity, and that the people should declare in their fundamental law, and thus give notice to all, that the State will not insure the safety of property transported upon its inland works of improvement. It is important that this principle should now be thus established, because the Legislature has, of late years, adopted a different principle, and yielded to the exorbitant demands

of claimants and the lobby, in the allowance and payment of claims of this character. Accidents are incident to all business and pursuits, and cannot at all times be avoided by the most prudent care and forethought, and if the principle of indemnity, as recognized by the Legislature in the acts referred to, is sanctioned, and not repudiated in the organic law, no one can foresee the extent to which the responsibility will be carried, nor the frauds and impositions to which the State will thereby be unavoidably subjected. In the management of the affairs of State, experience has always shown that to be the best policy, which lessens rather than increases the pecuniary responsibility of the government to its citizens. The next clause of the section prohibits the payment or appropriation for any damage or injury caused by any breakage or defect in the canals. This covers a class of claims which, of late years have grown to exorbitant proportions, and largely depleted the canal revenues. In former years the doctrine of the responsibility of the State was repudiated, and the individual left to his remedy at law, against the agent of the State, if the injury was sustained through his neglect, wrong or misfeasance. There can be no legal responsibility, on the part of the State, for damages in case of breakage or defect in the canals, when negligence, wrong or misfeasance cannot be imputed. An individual, even, cannot be held responsible because his mill-dam is torn away by a flood, and his neighbor is injured thereby, unless there has been culpable negligence on his part. That is the settled law of the land, and the case is precisely similar to that of the canal banks being torn away. Parties buy land and build along the line, and in the vicinity of the canals, with a full knowledge of the hazard incident to their maintenance and their liability to be torn away by floods and injuries from other causes. In the original appropriation of the land, damages for the appropriation were either released or assessed, and in either case they are construed to cover all damages connected with the construction and maintenance of the canals and the hazards incident thereto. Upon fundamental principles of law, no liability exists on the part of the State to respond for damages arising from any breach or defect in the canals caused by the negligence or misfeasance of the State officers or agents. In such case the injured party has an ample remedy against the delinquent official through the courts of justice, and legal remedies provided for his relief. Good policy forbids that the liability should be assumed by the State and the delinquent official be relieved. It is right that the officer should be made to respond for his misfeasance or neglect of duty, as he, being the culpable party, is the only one who should properly suffer and sustain the damages. It is true State policy, because such personal liability insures a more vigilant and careful discharge of duty on the part of the public officer. To refuse the allowance of such claims by the State is in accordance with the usual practice of governments and the established principles of law. It is laid down as a well settled and fundamental principle of law in Story on Agency, § 319, that—

"It is plain that government itself is not responsible for the misfeasances, or wrongs, or negligences, or omissions of duty of the subordinate officers or agents employed in the public service; for it does not undertake to guaranty to any persons the fidelity of any of the officers or agents whom it employs, since it would involve it, in all its operations, in endless embarrassment, difficulties and losses, which would be subversive of the public interests."

The same principle is laid down in 8 Wendell's Reports, 422, in the case of *Seymour v. Van Slyck*, where the court says: "Laches are not imputable to the government, and this principle is founded, not on the notion of extraordinary prerogative, but upon considerations of public policy." In 9 Wheaton's U. S. Reports, 735, in the case of the *United States v. Kirkpatrick*, the Supreme Court of the United States declared the same principle, and said, "The government can transact its business only through its agents; and its fiscal operations are so various, and its agencies so numerous and scattered, that the utmost vigilance would not save the public from the most serious losses, if the doctrine of laches can be applied to its transactions." That the party injured has a complete and perfect remedy by action against the subordinate officers of the government for any injuries or losses sustained by him from their misfeasance, neglect, or omission of duty, cannot be questioned. Such doctrine has been frequently sustained in our courts, and is distinctly laid down and discussed in the section of Story on Agency, above quoted, and a large number of cases are there cited from the reports of this country, as well as England, fully sustaining the position. Thus the Convention, in making the provision under consideration a part of the fundamental law, will merely affirm a rule of law as it now exists, founded upon a wise and judicious State policy. The frequent repudiation of these fundamental principles of law by the Legislature, in the allowance of claims against the State of such character, calls for the establishment and affirmation of the doctrine, and the declaration of the inviolable immunity of the State. Why should the State leave her interests and her rights to be at the mercy of the compassion and sympathies of the Legislature, to be expressed as we find it by scores in the statutes of the State prohibiting her officers from pleading her freedom from responsibility. The mawkish sensibility that will thus trifle with the rights of the State and deprive her of her just and equitable defenses, can only be met by erecting a barrier in the fundamental law. As an instance of the result of such repudiation by the Legislature of the rights and equities of the State, I will select one from hundreds of other cases, and call your attention to the tremendous freshet which occurred in March, 1865, in the southern tier of counties—a freshet which, perhaps, never had its equal. It tore away every thing before it, and scattered destruction in its course. It was a freshet and a power against which the artificial structures of man's creation were powerless for resistance. The State embankment in the Chemung river was, with every thing else, swept away; and still for this act of Providence, against which human wisdom

or skill could not guard, the State, under the mawkish sensibility of the Legislature in passing bills for relief, and deliberately therein waiving the freedom of the State from liability, has been charged with and compelled to pay damages to the amount of nearly \$100,000. Thus it is that the Legislature enables unprincipled harpies upon the public purse to speculate and grow fat out of the misfortunes of the State and her citizens. One of those claims was allowed and paid by the State at \$24,000. It had gone into the hands of a claim agent to be prosecuted on shares; it was so prosecuted, and \$24,000 awarded and paid. Since then one of the claimants has been examined before the investigating committee. His evidence is on your tables, showing that his actual loss was less than \$6,000, for which he recovered and divided with a claim agent \$24,000. (See testimony before Senate committee, pages 277 to 279.) It is no wonder that, with legislation of such character, we find large breaks, which may have been secretly aided by the shovel and the pick, followed with claims for damages to adjacent lands, and applications to the Legislature for relief statutes, containing, of course, the absolute waiver of the immunity of the State. If the legislators cannot appreciate, common sense teaches the fact that whenever, by legislation, you create an interest to be promoted or rewarded by breaks, you will have breaks; but when you repudiate such interest, you will not have them except by the act of God. The next prohibition relates to damages or injury arising on account of the construction or maintenance of the canals, etc., except for property or water actually appropriated, and the demand for that shall be made within three years after the appropriation. These canals have been constructed and completed many years since. All the lands appropriated, either for the original construction or the enlargement, must have been thus appropriated before the completion of the canals, and indeed before the work of construction or enlargement commenced. It is time that an end should be put to claims of that character. All claims for appropriation are required by law, and have since the commencement of our system of improvement, been required to be made within a year, or the citizen was deemed to have consented and waived his right to damages. That was a statute of limitations, created for the protection of the State, in order that all claims should be brought in while the appropriation and facts were fresh and within the knowledge of the officials of the State, and not permit them to be retained and held back until they were stale and the officials cognizant of the facts were dead or absent. Those laws were right and politic, and it is submitted that the Legislature should not be allowed, after the expensive experience we have had in the past, to deprive the State of the benefit of the wise, just and prudent provisions of that statute. All damages, incident to the construction or maintenance of the canals, were and always are taken into account in the estimation of damages for appropriation. Any person, at all familiar with the evidence introduced for the estimation of damages for appropriation, and the arguments used for their en-

forcement, knows that these incidental damages, for inconvenience and liability to leakage are prominent and are always taken into the account. If damages have been appraised for appropriation, then these incidental matters have been included and adjusted. If they have not been appraised, then they have been waived and released. It is right therefore, that these things should have an end, and that the Legislature should not be allowed to encourage fraud and imposition, by admitting their adjudication by special acts, and waiving the fact and principle that the State is not responsible. Another provision of the section under consideration is to prohibit the Legislature, or any board or officer from waiving the immunity of the State. It is right that the people of the State should be protected in their rights, and that their freedom and exemption from liability and responsibility should not be waived and relinquished. The harpies about the State Capitol, have succeeded for the last few years in procuring the Legislature to crowd and swell the volumes of our statutes with laws for relief, allowance and compensation with the acknowledgement of their impropriety confessed and stamped upon their face, in the plain and open direction, sometimes in one phraseology, and sometimes in another that the immunity and freedom from liability of the State should be waived and not interposed. Thus saying, in terms, you are plainly asking and demanding that to which you are not entitled, still as the subject is a fat goose, and we cannot resist your importunities, we will give you the opportunity to pluck it. That has become an evil of such magnitude, that the solvency of the State, and the protection of its creditors, demand the application of the remedy. The last clause of the section referred to is a prohibition against the payment of moneys out of the canal revenues for extra allowance or compensation to contractors. This provision has become necessary to protect the State from the great evils with which the contract system upon our canals has become pregnant. When the canal board was organized, among other discretionary powers vested in it, was the authority to grant extra allowances to contractors under certain circumstances. The evils of that system led to its abandonment, and in 1859 the canal board was by statute deprived of all power to grant extra allowances. That had the effect of turning the importunities of the contractor from the canal board to the Legislature. The result of that has been, that the pressure of those whose cry is ever give, give, without being or intending to be satisfied with any thing, has been too strong and urgent for the resistance of the Legislature, and the statute books of our State, since that date, are crowded with bills for relief, involving hundreds of thousands of dollars, and in such form, in most cases, as to be compulsory upon the canal board, or at least so considered by them, to grant allowances, whether proper and deserved or not. And notoriously, the contractor, by dint of perseverance and combinations, gains the ear of the Legislature, and is never turned empty away. The remedy has thus proved worse and more expensive to the State than the original disease.

The only resource now left is to strike at the root of the evil, and notify the contractor, by a provision in the organic law, that under no circumstances can he be allowed or paid extra compensation or allowance for work done or to be done under the contract. Then he will enter into the contract with a full understanding of the consequences. If it proves to be a hard one, and he is unable to perform it, his remedy is to abandon it, and submit to the forfeiture consequent thereon. I have thus far spoken more particularly in reference to the legality of the positions assumed in the restriction of the last section under consideration, incidentally, only referring to their necessity. I now desire, as briefly as possible, in some more general remarks, more fully to show their necessity. In the year 1835 the enlargement of the Erie canal was determined on, to meet the increasing demands of trade and commerce, and soon thereafter large portions thereof were put under contract. The same policy was continued by the incoming administration of 1838. With a change of administration in 1842 was inaugurated a change of policy. The changes having been persistently and effectually rung, in the canvass throughout the State, upon an alleged \$40,000,000 debt policy, the improvement system was repudiated, and the stop and pay as you go policy inaugurated. It was then determined that the enlargement should progress only as fast as the surplus revenues would meet the expenditures. As a necessary consequence, the bulk of the work on the enlargement was at once suspended, and the contracts, on the part of the State, violated. That policy, although apparently demanded by the people in the result of the popular election, in the sequel proved a most unfortunate and disastrous movement for the State. It not only retarded the needed improvement, and cost the State almost as much in damages for breach of contract, as the completion of the work would have amounted to; but it inaugurated the system of pressing and prosecuting claims before the Legislature. It opened a school for the education of claim agents, which has resulted in the present combined lobby system, now brought to such perfection. The results and effects of that system are evidenced at every session of the Legislature. The prosecution of claims of every description is taken up by them. They have, by dint of importunity and perseverance, succeeded in procuring the legislative recognition of almost every character of claim that can be imagined, even to recognizing liabilities in numberless instances when the principles of law and equity could not sanction it. To such an extent has that been done, that legislators have been obliged to insert in numberless bills, a waiver of every and all questions that could be raised against the liability of the State. The evil has grown to such magnitude, that appropriations of public money, to the extent of from three to five hundred thousand dollars annually, become necessary to meet them. The allowance of these claims serve to nurture and encourage these vampires fattening upon the life blood of the State, for where the carcass is, the vultures and harpies will be gathered together. Their nurture, existence, and encour-

agement about the halls of legislation has, more than any other thing, contributed toward raising the hue and cry of corruption in the Legislature, and it has most injuriously affected the credit and standing of legislators before the people. It has become a sore, a by-word and reproach upon the body politic, which must be eradicated. The most effectual way to accomplish that, is to remove the food, allment and inciting cause, by abolishing all these illegal and doubtful claims, and leave no power with the Legislature upon which they can operate. This is the end sought to be accomplished in the section under consideration, and its adoption will save the State nearly half a million of dollars annually.

Mr. BICKFORD—I move to amend by striking out all after the word "revenue" in the second line to and including the word "nor" in the sixth line. I agree that there is great reason for the complaints which are made of the manner in which moneys are drawn from the treasury of the State by reason of various claims arising out of the navigation of the canals, or the construction of the canals, etc., and I think it is proper to make some restriction with regard to those matters; but I cannot agree to this section as it stands, and particularly to two provisions contained in it, one of which I propose by this amendment to strike out. In doing this, I stand up merely for justice. Although the State may have been fleeced in the past, and although there may be danger of its being fleeced in the future by corrupt legislation and careless legislation, corrupt lobbies, or some other cause, still I insist that the State must not be unjust. It must do justice. The portion of the section I propose to strike out provides that no money shall be appropriated or paid by the State, or out of the canal revenues for the construction or maintenance of any bridge over the canals, where the bridge had not been already built on the first of January, 1867. In other words, this portion of the section says in substance: The State proposes in future to be unjust, and the reason why it is going to be unjust in the future is that it has been unjust hitherto. That is all there is of it. It may be a matter of absolute justice to maintain a bridge in a certain locality over the canals of the State. It may have been just years ago, and the State may have neglected its duty. The officials of the State, or those in charge of the affairs of the State, may have neglected their duties, and the consequence is, that because that injustice has been done, we now propose to step in and say that justice never shall be done, and assign as a reason why justice shall not be done in future, that we have not done it heretofore. I have heard, in private business transactions, of pleading the baby act and the statute of limitations and other sorts of dishonest steps that men take to get out of their engagements, and to get rid of doing justice; but it does not become the State of New York to resort to this sort of trickery, and I hope this will not be incorporated in the Constitution. I may be a little more familiar with matters in my own neighborhood than I am in other parts of the State, and I will mention an instance in my own neighborhood. An act was passed by the last Legislature for the

construction of a bridge over the Black River improvement, which is a part of the canal between the towns of Denmark and Croghan. Now, gentlemen are aware, I suppose, the fact is that the State has appropriated that river to its own use, and a certain portion of the land on each side, so many feet from the low water mark, to what is called the blue line. The State has paid for it and the State owns it, and neither the towns nor individuals can build a bridge there without committing a trespass upon the State. They have no business to do it; yet a bridge is absolutely necessary between those towns, and no person acquainted with the locality would say that it was not. Now, we propose to step in and to say that because a bridge was not built there prior to the 1st of January, 1867, therefore it never shall be built by the State, or by the towns, or by any body else. An act was passed by the Legislature at the last session for the building of a bridge there. It has not yet been built because the officers have not located the bridge, or they have not found the money, or for some other reason they have neglected entirely to do it; but the State has recognized the justice of the claim, that there shall be a bridge there between those towns, and has passed an act for the purpose. You propose to cut them off and say it shall not be done because it has never been done heretofore. The act has passed for two years in succession, as my colleague tells me. What is the justice of this? I stand up for justice and say that the State, which has appropriated the Black river and a portion of the land on each side of it, which claims it as its own, so that nobody can build a bridge there without committing trespass, shall be just and build the bridge between the towns of Denmark and Croghan when it is needed by those towns for their necessities, rather than for their accommodation. I am curious to know what sort of excuse there can be for this sort of injustice that is proposed. It is no excuse at all to say that bridges are built sometimes where they are not needed, and that public officers have heretofore built bridges where they should not, or the Legislature has been importuned to pass laws to build bridges where they are not needed. That is no excuse at all. Suppose a man who owes a thousand dollars should say, "I have been robbed—a robber has broken into my house and stolen money from my drawer or my safe, and therefore I will not pay my honest debts." What kind of an excuse is that? Or rather, to put it more strongly and more as it is, suppose a man should say, "My agents, whom I have employed, have squandered my money and my means, and I lost this year, instead of making money, and therefore I will not pay my hired help and my just debts, because my agents have robbed me, and my means have been squandered." That is the position the gentleman proposes that the great State of New York shall take, in substance. I never will consent to it—never.

Mr. ALVORD—I do not wish to indulge in any very extended remarks in regard to this proposition that is now before the committee. The proposition is to strike out that part of the section which refers to the building of bridges where

bridges have not been in existence prior to the first of January, 1867. Now, sir, it has been the rule, invariable and inflexible, in this State, before the Legislature of the State, with but very little exception ever since I have had any thing to do with the legislation of the State, to compel parties to show, clearly and conclusively, that the operation of building the canal has cut some well known highway, or some laid out and occupied road in two, within the limits of the corporation or within the limits of the town, before the State will be compelled, under the ideas of the Legislature, to build a bridge in the place mentioned. But in almost every instance where they have succeeded in getting bridges built over the canal at points to connect two ends of the road or street they have done it by representing to the Legislature that some old map showed that the street was laid out before the canal was built there; that there was a street, or some highway upon which work had been done before the canal was in existence. That is the only ground upon which they have undertaken to stand, and that has been done over and over again. I speak now of what I know as a member of the canal board in this State in the investigation of these matters, that there has been fraud in procuring laws passed, authorizing the building of bridges. The proposition of the Committee on Canals is this: The canals of this State are now completed. There is no earthly doubt remaining in the mind of any man upon the subject, and I challenge the gentleman from Jefferson [Mr. Bickford] to prove that there is a single place upon the line of the canals, from one end to the other, where there is not a bridge in existence where there was an existing road at the time the canal was built, where the road was necessary and had not been abandoned.

Mr. KINNEY—Will the gentleman allow me to call his attention to the Chenango extension now being built?

Mr. ALVORD—That is provided for in the law.

Mr. KINNEY—It is not in this section.

Mr. ALVORD—I understand it; it is provided for in the law. It is customary in the State, when there is new work done, upon a new canal, to build bridges where there are roads passing over the canal.

Mr. KINNEY—Will the gentleman allow me to ask him a question?

The CHAIRMAN—Does the gentleman from Onondaga give way?

Mr. ALVORD—I do not wish to give way. I wish to speak myself. I will say to the gentleman from Tioga—because he and I will come to the same conclusion before we get through—that I have no objection to an amendment by means of which it shall be provided that if in the future the State shall make any new work, if any new canals shall be built, bridges shall be provided for. But I wish to stop this flinging from the State treasury under false pretenses, as it has gone on for years and years gone by. In regard to the very instance which the gentleman from Jefferson cites, in 1866 a law was passed in reference to that bridge, and the only way those who stood up for the rights of the State could defeat it was to cut down the appropriation to \$6,000,

which was so low that the canal board could not build the bridge. Last year it was raised to \$18,000, and if I were a member of the canal board to-day I would sit to the end of time before I would go for an appropriation to build that bridge. What is the Black River canal at that point? It is a natural river of this State. It is used as a canal and dredged out as a canal; but that does not change its nature at all so far as regards the fact that it is a natural highway or natural river of the State, and the parties there, if the State had not gone to work and dug out the canal, never would have thought of the idea of the State's building bridges for them in that locality. The gentleman talks about the State owning the land each side of the river. Does not he know that the commissioners of highways have a right to go across the State land, as well as any other land, in laying out a highway for the benefit of the community? And does he suppose for a single instant that if the people there were to come to the Legislature and ask for an enabling act to enable them to build a highway and bridge across the Black river at that point, there would be any hesitation in giving them the permission? It is the merest nonsense to talk about the State having closed up the gap so that they cannot cross from one side to the other. They will do in the future just as they have done in the past in building their canals. Go to my section. Bridge after bridge has been built there, not by the State, but by us. We do not ask the State to build them for us. Go down to the Oswego river, which has been a canal much longer than the Black river. Who is it that maintains the bridges there? There the State of New York has dug out the channel, and has made it a canal, and there are bridges every three or four miles across the river. Does the State build those bridges? No, sir. The towns on each side of the river maintain them. The counties and towns together maintain them, and they are called upon again and again to pay taxes for rebuilding those bridges, maintaining them and keeping them in repair. That is what we do on that river, and that is what we should do everywhere. I hope there will be no hesitation on the part of this Convention in voting down this proposition so far as regards the finished canals of this State. That would be, perhaps, the best amendment my friend from Tioga could move, to say that no bridge should be built over the finished canals of the State, where a bridge had not been built by the State prior to the first of January, 1867. Tens and hundreds of thousands of dollars have been paid out of the canal revenues of this State, under the specious pretext that some city or village map, hunted up from the musty records of times gone by, showed a road in some particular locality, before the canal had been built, when, in fact, the road had its only existence in those mere lines upon paper. In that way streets were laid out to the canal on each side, and bridges were built that never would have been built but for these maps in the pigeon hole of some owner who probably expected, at some time or other, that the village would grow up as he had mapped it out, and who possibly filed his map, as they often do, in the clerk's office, but at no time had

there been a road or highway there until the canal brought it into use, and made it valuable, and then a street was opened; and then, forsooth, the men come here, and stand upon the floor of the Legislature, and when asked the question—upon the ground that it is the policy of the State not to build any bridges over a newly opened street—whether there ever was a street there in the past, whether there ever was a street opened before the canal was built, I will not say that they intentionally tell an untruth, but they say they have been shown some map, and that there was a street laid out there in 1830 or 1825, or 1817 or 1818. This looks right to the Legislature, and they go to work and make the appropriation. There are very many instances where the canal board have absolutely refused, notwithstanding the act of the Legislature, to go on and build the work, and afterward, when the matter came up for investigation the laws have been repealed. I trust so far as regards this part of the section, we shall do something toward preserving the money of the State, and not permit the State to be fleeced for the purpose of building up in these growing villages and cities along the canal, bridges in addition to the other benefits and advantages growing out of the existence of the canal in the locality. It is enough for us to know that there is not one of them, from one end of the State to the other that has not been largely enriched and benefited over the other localities which have had to pay their portion of the expenses of these works, and now, forsooth, they ask to be benefited still more by the State building their bridges, and they will ask the State to do their highway work, before they get through. I hope this motion will not prevail.

Mr. KINNEY—I regret very much that I am in such bad odor that I cannot ask the gentleman from Onondaga [Mr. Alvord] a question. I believe this is the first time he has refused to be interrogated. I intended to move that this section should be stricken out entirely. I think the best way to get rid of it is to wipe it out. According to this provision any canal now in the process of construction may be completed, and the people along its line cannot recover one cent of damage for any injury they may sustain in consequence of the construction of that canal. The State is not, under any circumstances whatever, permitted to build a bridge over the extension of the Chenango canal as it is now proposed to be extended to the State line. And not only that, but the Legislature is positively prohibited to build bridges over a canal of any kind. Every gentleman will see the force, undoubtedly, of the objection, and will admit that the provision ought to be amended so that the State may build bridges in cases of that kind. It strikes me that the gentlemen who have brought in this provision should have considered the fact that the State is now building a canal, and that as the section now is, the State is under no obligation to build bridges over that canal, or to pay the people the damages they may sustain by reason of its construction, or by reason of its navigation. They did not see fit to do so. Instead of moving to strike out the section, I have come to the conclusion that I will endeavor to give it an application only to canals

already completed and in running order, by offering the following amendment, which I think will reach the object designed. I move to insert, "completed on or before the first day of January, 1867."

Mr. ALVORD—Will the gentleman permit me a moment?

Mr. KINNEY—I have not the slightest objection.

Mr. ALVORD—I have no sort of objection to that amendment. But I wish to say a few words in regard to the matter. The gentleman from Tioga [Mr. Kinney] will find in the latter part of the section a provision that no land or water taken by the State for the purposes of the canals shall be taken without just compensation.

Mr. KINNEY—I am aware of that fact. But that does not permit the State to build bridges; it does not permit the State to pay for damages which people sustain aside from the simple taking of their property. It is very defective in that respect.

Mr. MAGEE—I feel constrained to oppose all these amendments. I have had some experience upon the canals; I have witnessed for the last twenty years the pillage of the public treasury for the benefit of localities. Because you have first enriched the locality from the treasury by building the canals. Should you continue to furnish the funds from the treasury for these local purposes? I know a case in my own locality where, to suit the views of the then canal commissioner who owned property through a large portion of the country, the Chemung canal was enlarged, from Seneca lake up to Havana, and without authority of law, squandering more than a quarter of a million of dollars. A considerable stream came running from the mountain to the flats, at that time, diagonally to the canal. It became necessary to change that stream and turn it across the canal. Of course there was a bridge across that stream where it was originally located. That was taken down; the space was filled up at the expense of the State; and the new channel was bridged at the expense of the State; and it was entered as a canal bridge. Now, the street upon which that bridge is built (and I know what I am talking about, for I drive over it very often) is from six hundred to ten hundred feet from the canal. Within the last three years, under the administration of Canal Commissioner Bruce, a new bridge was built there at the expense of the State, and is, as I understand, a State bridge.

Mr. ALVORD—Is there not more than one bridge?

Mr. MAGEE—I do not know; I know about this one, and I speak of what I know personally. The treasury has been plundered from year to year, and will be plundered from year to year, unless we prohibit these local claims for more bridges at the expense of the State. Suppose my friend from Jefferson [Mr. Bickford] is a farmer adjacent to a village. He discovers he can make more money by annexing his farm to the village than he can in cultivating it. There are one or two or half a dozen streets projected across the canal, along, which his farm lies, for his benefit. Now, is it to be supposed that the public treasury is to supply the funds to

build the bridges across that canal because the gentleman has seen proper to make himself rich, or to try and better his circumstances by putting his property on the market? I hope the committee will make no alteration. To my friend from Tioga [Mr. Kinney] I will say, that the people were tenfold benefited by the expenditure of money in the extension of the Chenango canal. The expending of public moneys has paid tenfold the damages. The canal is worthless whenever the railroad along North Branch canal is completed. The thing is preposterous. The North Branch canal, with which the Chenango extension is to connect, has not been navigable but little the present year. There was not a boat passed until the 15th of August. They are drowned out or washed away with too much water or there is no water. What is the use of building a canal or connecting the Chenango canal with a canal of that kind? A railroad is now in course of construction up the valley, and when that is done the canal will be abandoned. I hope the provision will not be disturbed.

Mr. BECKWITH—I do not propose to go over any of the argument, but I desire to answer some of the arguments of the gentleman from Jefferson [Mr. Bickford], who addressed us. He says that this provision which we propose to introduce into the Constitution is, on the part of the State, unjust. Now, it is very easy to charge injustice; but has the gentleman adduced any argument for our consideration that shows there is any injustice in such a measure as that proposed by this provision which we have recommended for the adoption of the Convention. In my village there is a large stream running through the center of the village, over which the corporation builds two large bridges, much larger than any bridge over the canal, and we have to maintain them. Would it not be equally just to ask the State to build them? Is there any injustice in requiring the community to be benefited thereby to build bridges for themselves, when the State has constructed for them a navigable stream which benefits them and increases the value of their property largely? I think not. You will see by the provision that it does not prevent any town, county, village or city from building a bridge over the canals. If it does, the Legislature could pass a general act, authorizing the commissioners of highways to lay out roads across the canals, and authorize the bridges to be built, but at the expense of the town or county who desire such a bridge. There is nothing in this provision prohibiting that. I have no doubt, myself, the commissioners of highways have a right to lay a road from one town to another, that would cross the canal, and then authorize the building of a bridge. But the State would be free from the expense of building it; and that is all there is in this provision. The gentleman, therefore, is mistaken when he says that this provision forbids the building of a bridge across the canal. It contains no such provision.

Mr. BICKFORD—I do not take the position that this provision forbids the towns building bridges; I only state they could not build it

without being a trespasser, as the State owned the land.

Mr. BECKWITH—If the gentleman will look at the statutes of this State, he will see that the commissioners are authorized to lay out roads across public lands and the lands of individuals, provided the owners are paid for the damages they sustain in consequence of the location of those roads.

Mr. BICKFORD—Will the gentleman allow me one question?

Mr. BECKWITH—Yes, sir.

Mr. BICKFORD—I would ask the gentleman if it is his construction, as a lawyer, that when the State allows a public road to be laid across public lands, it is within the purview or meaning of such a law to build a bridge over a canal which the State owns, of any height you please?

Mr. BECKWITH—No, sir; I do not intend that. I only contend that if the commissioners have a right to lay out a road which will cross the canal, they have a right to build a bridge; but they must build it of the dimensions and form and height prescribed by the act of Legislature. But if they have not that right, this provision does not cut off from the Legislature the power to grant that right. Now, sir, is there anything unjust in all this? If the people of the town where the gentleman resides, and of the adjoining town on the opposite side of the Black river which is used as a canal, desire a road to connect those two towns, they can easily lay it out; but they ought to build a bridge for the very reason that they are to be benefited by it, and they have been more benefited by the moneys expended by the State in converting that river into a canal than the cost of a great many such bridges. They should build their bridges across those streams just as much as citizens in a neighborhood like mine, who build large and expensive bridges across rivers much larger than the canal. The corporation in which I reside builds two and the town builds some five or six.

Mr. BICKFORD—Will the gentleman allow me one question?

Mr. BECKWITH—Certainly.

Mr. BICKFORD—The river is navigated by steamboats, and they require draw bridges; but those bridges must be regulated by the State. They cannot be built otherwise.

Mr. BECKWITH—The State can regulate the forms of bridges and their construction; I have no doubt of it.

Mr. ALVORD—Will the gentleman permit me?

Mr. BECKWITH—Certainly.

Mr. ALVORD—On the Oneida river, steamboats run; and the towns build the bridges.

Mr. BECKWITH—The gentleman's argument amounts to this: That the New York Central, and the railroad on the east side of the Hudson river would have a right to apply to the State of New York to build the bridge across the Hudson river, which is now built for the benefit of those railroads, for the reason that they navigate that stream. Will any body say that they have any claim whatever on the State because the people of New York navigate it as a public stream, with both sail vessels and steamers? Certainly not. If the State of New York had been at the expense

of building them a navigable stream they should be willing to build the bridges. It would be no more than an act of justice to compel them to build all the bridges that have been built over the canals for the benefit of the owners of land, and the persons in the immediate neighborhood of the canals and streams that have been benefited a thousand fold more than the expense of building these bridges.

Mr. BICKFORD—I wish to ask the gentleman a question with which I suppose he is familiar. Has the Legislature or the Constitution of the State ever declared the Hudson river to be a part of the canal system of the State?

Mr. BECKWITH—No, so.

Mr. BICKFORD—Well, it has the Black river.

Mr. BECKWITH—That is true. But when the State has expended a large amount of money for the building of a road or canal, or the improving of a thoroughfare, it would be perfectly right for the town or village wanting such road to build a bridge across it. Suppose the State had never appropriated their money to the improving of that river, would not the people in the neighborhood have been obliged to build their own bridges? Would they have had any right to ask the Legislature to build them, any more than we who live in Plattsburgh, have a right to ask the State to build our bridges, which are much more expensive than any across a canal, except those in large cities? The gentleman has attempted to adduce an argument here in favor of his position, by saying that if my agent gets me in debt by his negligence or wrongful act, I am therefore free to pay my honest debts. The argument amounts to nothing. But I deny that a public officer is an agent. Public officers are not agents in any sense of the term. The State is not liable for the negligence of its officers. A county is not liable for the negligence of its sheriff. The officer himself is responsible. The court of appeals have held that an officer is not an agent. A principal is responsible for damages arising from the negligence of his agent when in the proper discharge of his duty, but he is not for his trespass. If he is guilty of neglect, or does the work in his charge in such a careless manner as to do injury to another the principal is liable. The relation between the people of the State of New York and its officers is not that of principal and agent. They are officers, and they are liable to be indicted for misfeasance in office. The rule of law applicable to principal and agent does not at all apply to this case of a public officer. The people of the State have built the canals, and the rule that applies to highways should apply to canals. And what is the rule as to highways? If the public lay out a highway, and build a bridge across streams of water, it is the duty of the commissioner of highways to keep these bridges in repair. But suppose they do not, and I drive along and my horse breaks through a bridge and is killed, can I sue the town or county? Certainly not. No action can be maintained against the town or county. Can I sue the officer? Not as an officer. I might sue him as an individual for neglect of duty, but I cannot sue him as an officer, and recover, unless I can show that he had moneys in his hands for that purpose.

Mr. BICKFORD—Will the gentleman give way?

Mr. BECKWITH—Yes, sir.

Mr. BICKFORD—I have not advanced any such argument.

Mr. BECKWITH—I am discussing the argument why the State should not build these bridges.

Mr. BICKFORD—You assume such a position.

Mr. BECKWITH—I am endeavoring to show that those persons who had charge of the canals were not the agents of the State, but mere public officers.

Mr. BICKFORD—Yes; but you do not apply it as I stated. I said this: that you said the State had been fleeced heretofore through the negligence of its agents.

Mr. BECKWITH—Not agents, but officers.

Mr. BICKFORD—It is the same thing; they are agents or officers; and therefore, hereafter, you will not do what is justice, because your agents had allowed you to be fleeced.

Mr. BECKWITH—My position is this: that they are not agents, and that the rule that applies between principal and agent, rendering the principal responsible for negligent or careless acts on the part of his agent, that results in damages to another, does not apply in the case of a public officer. Neither a town, or county, or State, is liable for damages resulting from the omission of duty, or negligence of its officers; for the plain reason that they are not agents, they are officers. So that the State is not responsible, and should not be held responsible for such damages. To illustrate it, I wish to refer to a case of highways. As I remarked, if a highway is constructed for public use that passes over a stream of water, over which a bridge is constructed by the public, the public cannot be sued for any injury that happens to a person driving across that bridge if it is defective. You cannot sue a town or county; you cannot sue an officer, unless he neglects his duty, except he has the money in his hands at the time for such purposes. If he had the money in his hands, he might possibly have been responsible. Some cases have gone to that extent. But the idea is, they are not agents but officers; and therefore the public in no sense is liable for their neglect, nor for injuries which result in driving along the highway across a bridge. That being the case, should the State of New York be liable for damages that arise in navigating the canal? A man takes his boat and goes on a canal, and traverses it just as a man traverses, with his team, along the highway. He takes upon himself the perils of travel on the highway. So, when a man navigates a canal, he takes upon himself the risk of navigating his boat along the canal. And on no principle of law that regulates society, is there any legal liability, on the part of the State, to pay those damages, none whatever. The only liability arises from the fact that the Legislature creates it by waiving the immunity of the State. So that the gentleman's argument, saying it is unjust on the part of the State, or that the State forbids the building of bridges, amounts to nothing in my judgment.

Mr. E. A. BROWN—It seems to be confidently asserted, and I do not know that it can be denied,

that heretofore, through the action of the Legislature—and it would seem by the statement of the gentleman [from Schuyler [Mr. Magee]] through the action of the canal commissioners and others—bridges have been built at the expense of the State, which should have been built at the expense of towns or individuals. It seems to be admitted that in this respect there is an evil to be remedied, and the article proposed is for the purpose of remedying the evil. Now, sir, if it be true, it is a lamentable truth that the Legislature cannot be relied upon to protect the State treasury in these particulars. It is said the Legislature has failed to do that; therefore we are called upon, by a constitutional provision, to restrict our Legislature in that regard. It strikes me that the article, as it is framed for that purpose, goes much farther than the evil complained of necessarily requires. It says, in the first place, no money shall be appropriated or paid by the State, or out of the canal revenues, for the construction or maintenance of any bridge over any of the canals, or feeders connected therewith, at any point where a bridge was not located and maintained at the expense of the State prior to the 1st of January, 1867. That is a sweeping provision; and it is an impropriety, in my judgment, as has been well stated by the gentlemen who have preceded me. The gentleman from Onondaga [Mr. Alvord] says, as I understand him, that in Syracuse the State is not called upon to build canal bridges. I do not know but that is so. If it is, it is a truth not at all applicable to any other city in the State, through which our canal passes, that I have ever heard of. We are also informed that bridges upon the Oswego and Oneida rivers are built at the expense of the towns and localities along the rivers, and not at all at the expense of the State. I do not know but that is true. It may be true. I do not say that it is not true that those bridges over rivers which are used for the purposes of canal navigation and steamboat navigation, that they are constructed at the expense of localities. But if it be true to the full extent asserted, that bridges have been constructed in Syracuse, or in the locations named, across streams along which a tow-path has been constructed, without a call on the State treasury, it is indicative of a degree of modesty and forbearance on the part of that locality that I have not heard of before in that or other localities. I am not prepared to controvert the statement. I do not controvert it. But it is a curiosity if true. Allusion has been made to an act of the Legislature passed in 1866, and again in 1867, with reference to the Black River canal, requiring the canal board to build a bridge across the river at a point where there is a great deal of travel, and where a bridge is necessary. A bridge cannot be built there without an expensive draw to allow of the passage of steamboats, which would double or treble the cost of a bridge suitable for ordinary travel over that part of the stream. I do not know how much it would cost. There are over forty-two miles of that river navigable for steamboats. The canal-boats passing up and down are all towed by steamboats, there being no towing-path on the river; and these steamboats cannot pass

up and down the river without draws in the bridges.

Mr. BECKWITH—Would not there be an equal necessity for a bridge if the State had not improved the river?

Mr. E. A. BROWN—By no means so expensive a bridge would be required.

Mr. BECKWITH—Would not steamers run up the river?

Mr. E. A. BROWN—My honored friend, I suppose, is aware that steamers are on the river for the very reason that the State has connected the river with the canal. All the canal-boats are towed up and down by steamboats. There is no towing-path on the river.

Mr. BECKWITH—Was it not navigable before to the extent to which steamers run?

Mr. E. A. BROWN—There was an attempt several years before the canal was built to navigate, but the experiment amounted to nothing. The river, for a distance of forty-two miles, is used as a canal, declared so by law, and is used for that distance, and tolls collected on it, though somewhat shorter, in a straight line. There was no steamboat navigation before the canal was built.

Mr. BICKFORD—Do you recollect there was only a small portion of the river navigable until it was improved and made navigable?

Mr. E. A. BROWN—It was never practically navigable for any purpose. A small steamer was built and ran up and down the river once or twice. But there is another thing about this river bearing upon the obligation of the people to make bridges over works that are declared to be canals. The long level of the Erie canal lives upon the Black River. It cannot exist thirty days without it. By a dam across the Black river, in ordinary stages of water, the whole stream is diverted from its channel ten miles from Booneville and made a navigable feeder for the Erie canal and also for the Black River canal. The people in that section of the country lose the benefits of all that water in the dryest season of the year when it is most needed for the navigation of the river and for hydraulic purposes. I take it that it is not true that the single act to which reference has been made by my friend from Jefferson [Mr. Bickford] is the cause of this hue and cry against the action of the Legislature in making bridges over canals for localities where those bridges ought to be kept up by the people themselves. This one act would not be sufficient to create all this fuss on that subject. This section under consideration prohibits the State from authorizing the expenditure of any money to make a bridge across such a feeder as may be constructed hereafter to feed this canal and keep it in existence. There is no provision for any expenditure of this kind, no authority to make a single bridge across such a feeder as may be constructed hereafter in any locality where it may be thought necessary. Now, sir, suppose my friend, over the way, has a farm there, and the stream is diverted and his farm is divided, not by a navigable stream, but by a feeder for this canal, so that one portion of his farm is separated from the other, by this feeder; under this constitutional provision re-

ported by the Canal Committee, it is utterly out of the power of the Legislature of this State, or any of the State authorities, to construct a bridge there for the accommodation of his farm, whether there is a road there or not. Now, suppose the State makes such a feeder, and it will have to make many of them, I take it before the canal system is abandoned or the canals are dried up. Suppose they make such a feeder, and after the construction of it, it becomes necessary to lay out a new highway; were it not for the presence of this feeder, no additional expense would be necessary, but such expense is rendered necessary by this feeder; and I ask if the community through which this feeder is supposed to be constructed—deriving probably no benefit from it, but a real damage by the diversion of the water out of its natural channel. I ask if the necessary expense of making a bridge for this new highway crossing, such feeder can rightfully be put upon the locality when the expense would not have been necessary if the State had kept out of the way and had not interfered? And so in regard to the canal. Take this very question of the extension of the Chenango canal, or any other canal that may be made, and five years after the building of that canal, a road is necessary in a place where there is no road now; is not the locality put to additional expense by the existence of the canal there; and the additional expense of constructing a costly bridge for the road? Now, the gentleman says, and the argument is worth something I admit, that the community may have derived benefit from the canal but that may be true in some cases and in other cases it may not. He says further that because they have derived this general benefit from the canal, therefore they should bear the whole expense of building this expensive bridge. I do not think it follows, by any means, as a matter of course, from the fact of their deriving benefit from the canal; because it may in any case happen the other way, and as I have said, the construction of such bridge was rendered necessary by the construction of the canal. But I will not detain the committee longer on this subject. The next provision of which the gentleman from Uister [Mr. Schoonmaker] spoke, I have nothing to say about, except as to damages and injuries caused by breaks in the canals. It seems to be desirable that all these public works should be well constructed so that none but unavoidable breaks should occur. This provision reads: "Nor for any damage or injury arising from, or on account of the construction and maintenance of any of the said State canals, feeders or structures connected therewith." Now, it seems to me, that is rather stringent, if I understand its purport and meaning. I do not know how far it is intended to be limited by the last clause; but taking it as it reads, it seems to me that if a canal is constructed through a new country, or if a dam is constructed for the purposes of a feeder, or for any other canal purpose, and thereby a flat of a hundred acres, worth perhaps a hundred dollars an acre is entirely submerged, or is so far soaked and injured by the water as to be damaged fifty per cent, it seems to me that in such a case this section prevents the State from

paying one single dollar for the damage, however much an individual may suffer by the acts of the State. The damage may grow out of the construction of a canal, or out of the construction of a dam, or of a reservoir for the purpose of saving the water during the wet season to be used in the dry season, as is often done, and in this way the water may be raised as in the construction of reservoirs, ten, eleven or twelve feet, and may materially injure the neighboring land which may be very valuable; but by a provision of this kind, the person sustaining the damage will be entirely cut off from all remuneration, for it says, "nor for any damage arising from or on account of the construction or maintenance of any of the State canals, feeders, or structures connected therewith." That section seems to me to have that meaning. I cannot read it otherwise. A man whose farm is damaged or destroyed by the construction of a canal or feeder, or of any work connected therewith is utterly remediless under this Constitution, which puts it out of the power of the Legislature to afford him any redress. In regard to extra allowances, I am entirely with this committee; I do not believe in that doctrine of extra allowances.

Mr. BECKWITH—Would not the word "existing" inserted before the words "State canals," where they occur, remove a good share of the gentleman's objections?

Mr. E. A. BROWN—I am speaking of the section as it reads and as I understand it; if it is properly amended so that I can vote for it, I shall do so.

Mr. COOKE—It is evidently not desirable that the committee should come to a vote on this amendment to-night. I, therefore, propose—following the example of my friend from Lewis [Mr. E. A. Brown]—to look through this section and see if it does not contain provisions that are out of character and unworthy to be inserted in the Constitution. I had prepared an amendment, proposing to strike out certain provisions, but as that amendment cannot now be introduced, I propose to state what it will be. I have something to say about this provision that the gentleman from Lewis [Mr. Brown] proposes to pass over, prohibiting the paying out of any money for damages or injury caused by breakages or defects in any of the State canals, feeders or structures connected therewith. A man has a valuable crop or valuable property lying along the canal, and that canal, in time of freshet, breaks by reason of some defect in its construction, or by reason of its being out of repair, and, as a consequence, the man's property is damaged to the amount of thousands of dollars, or is swept away entirely. His fortune is destroyed. I insist that there is no reason, under heaven, in such a case, why he should not be remunerated in some form or other. The gentleman from Clinton [Mr. Beckwith] says, and says truly, that the State is not legally responsible. I admit, sir, that the immunity of the State is entire and unqualified, and extends to every claim. The State cannot owe a man; the State cannot be indebted on account of any injury, without express provision of law. That is the immunity of the State; but no government was ever organized, under heaven, that

did not reserve to itself the power of doing justice in a case of that kind. A State that would put it out of its power, a State that would bind and obligate itself not to do justice to the citizen, not to repair the injury it had done him, would be unworthy to be perpetuated. What reason is there, in a case of damage sustained in this way, why the State should not remunerate the citizen? A corporation that has constructed a canal or work of any kind, and by reason of the work being out of order, damage results to the citizen, is held liable. The State, I say, ought, in the same case, to respond to the citizen's claim and to make good any damage that is done him; and yet, if this provision is retained, there is no case where the citizen can come in and obtain justice at the hands of the State, because the State will have precluded itself from doing justice. Now, I had proposed to strike out all, beginning with the provision I have alluded to, down to the beginning of the provision prohibiting extra allowances, retaining that, and then to strike out this provision: "The immunity of the State shall not, at any time, be waived by the Legislature or any public officer or body." This provision would apply to all cases. Not alone those connected with the canals, but to all other cases. As to all manner of claims against the State, the rule is uniform. "The legal immunity of the State shall not be waived by the Legislature or by any person or body." Let us see, for a moment, what this Convention has already done. In the article on the powers and duties of the Legislature, we have already authorized the Legislature to waive the immunity of the State. We have provided for a court of claims, and for the manner in which all claims shall be presented, and upon what principle they shall be allowed. I will read from the section:

"There shall be a court of claims to consist of three judges to be appointed on the nomination of the Governor, by and with the advice and consent of the Senate, in which court shall be adjudicated all such claims against the State as the Legislature shall from time to time, by general laws, direct."

Here the same legal immunity of the State is concerned, and here is a provision allowing the Legislature to create a liability against the State by simply waiving that immunity:

"Such claims shall be tried without a jury, but the facts found by the court and on the proof shall be stated in each adjudication. In all cases where such claims shall amount to five hundred dollars or more, and be for the value of, or damages to, real estate, the judges of said court shall, and in all other cases may, view the property in question, and in deciding thereon, shall consider their own estimate of such view or damages, in connection with the evidence in the case."

I would like to ask the gentleman why that provision has been enacted, and what it is that it relates to; what kind of claims are to be tried before this court, which is to consist of three judges, and to proceed according to the course and practice of the common law of the State as modified by statute?

Mr. BECKWITH—The case is provided for in

the last clause of this same section, and also damages arising on contracts where the State would be legally liable according to the rules of common law. There is no legal liability in this case.

Mr. COOKE—The State is not liable at common law?

Mr. BECKWITH—There may be a legal liability at common law for taking away property.

Mr. COOKE—The right of eminent domain is by the Bill of Rights in the existing Constitution, encumbered with the proviso that compensation shall be made for private property taken for public use. That is all there is of the common law liability of the State. Now, my objection to this section is, that in the first place it is iniquitous and abominable to establish any such principle in organizing the State government, and also that it is inconsistent with the prior enactment to which I have referred which has passed this committee, and is now in the hands of the Committee on Revision. I think, sir, that under all the safeguards provided in the section that I have read, we may very safely trust these matters between the State and the citizen in the hands of the Legislature and of the State authorities. I do not think there is any thing in the argument in favor of this section that frauds have been committed by the agents of the government. I choose to use the word "agents," although my friend [Mr. Bickford] was criticised by the gentleman from Clinton [Mr. Beckwith] for using the word "agent" in connection with the officers of the State. By agents of the government I simply mean those employed by the State to act in its behalf. Now, sir, I believe that it is entirely safe to leave the disposition of these questions in the hands of the Legislature, and of the officers provided to administer the laws, and to superintend the public works. I believe that we can safely leave them there under the provisions that I have read from the article reported from the Committee on the Powers and Duties of the Legislature, and by doing so, and striking out these provisions, we shall at least preserve our consistency, unless, indeed, we are prepared to strike out the other section that I have referred to.

Mr. ALVORD—I have a very few words to say in answer to the gentleman from Ulster [Mr. Cooke]. I am perfectly astonished at finding an argument of this kind coming from that quarter of the State. Still, the gentleman has undertaken to argue this, not as a legal, but as a sort of conscience question, rather than from any other standpoint. I hold, in the first place, that the State of New York in its sovereign capacity, and at the request of the people of the State, has seen fit to put into existence an artificial river, and has paid to the people along the line of that artificial river, all the damages originally occasioned by the appropriation of property or water for that purpose. From the beginning of the canal system up to the present time, the State has not in any instance attempted to offset the benefits it has conferred, against claims for damages. It has never been allowed to do so by the court of claims, the canal appraisers, or any one else. They have always looked at the naked appropriations, the naked results, the immediate damage to the parties, and in that way parties have been

paid; and there is not, upon the line of this artificial river, anywhere in the State, and there cannot be found a case where property has not appreciated in consequence, vastly beyond what it would ever have been worth, if it had been left, so far as regards the canals, in a state of nature. I therefore hold that so far as this matter is concerned, the State has done these people a great public benefit, and the work is in the nature of a river, rather than of a canal owned by a corporation and used by that corporation for the purpose of getting to itself money. The idea of the State has always been, and in discussions upon this floor, in the public papers, and elsewhere, all men agree, that when the State shall have received from this artificial river, by way of tolls, enough to pay for the original cost of the construction of this work, it shall then lower its tolls down to that point which will be barely enough to keep it in navigable order; and no one, not even those who feel most strongly in regard to this matter of the construction of the canals, that they are a great benefit to the citizens of the State at large; no one has any idea of looking upon this system in any other light than this—that we are to get from them a sufficient amount of money to pay for the original cost, and then to reduce the tolls for the use of the canals down to an amount which shall be barely sufficient to maintain them in order and in repair. I think, therefore, that the argument of the gentleman from Ulster [Mr. Cooke] when viewed in this light, is not entitled to the great weight which he puts upon it. Another thing. There is no earthly doubt, the gentleman from Ulster [Mr. Cooke] will not for a moment deny but what he calls the “agents” of the State (though they are not its agents at all, they are the *officers* of the State)—if they were its agents the State would be responsible in these cases as a matter of course. The gentleman will not deny that the officers of the State, if, through any negligence or malfeasance or inattention on their part, damage has accrued to parties living along the line of the canal, or of any other structure belonging to the State, are responsible personally. That is the fact, and the party damaged has his remedy personally against the officer.

Mr. COOKE—If the gentleman wants to know my opinion upon that point, I must say that I do not understand that the officers are liable. The officers of a town are not liable as a matter of course for any injury resulting from a bad road or bridge.

Mr. ALVORD—Certainly they are not, unless it can be shown that the town has put them in funds and directed them to make the necessary repairs; then if they have neglected to do so they are responsible.

Mr. COOKE—That I understand to be precisely the position of an officer under the State. He must have power to make the necessary repairs, or else he cannot be held culpable for any omission or negligence to do so.

Mr. ALVORD—Certainly, that is just what this section says. It simply says that so far as the State of New York itself is concerned there shall be no power to resort to it for remuneration in these cases, but it does not take away the

remedy so far as regards the officers of the State, and in the history of the canals of the State it is well known that ever since they were started, there has never been any place nor time when the officers of the State having charge of the interests of the State in this regard, have not had an abundance of means, to take care of, repair, and protect the State works so as to avoid any injury to neighboring property, and that where the officers have failed to do this it has been through carelessness, negligence or want of understanding on their part. Now, does the gentleman know another thing, that we have had our canals in this State virtually finished for the last fifteen years, and that they have been declared finished by statute over five years, and that to-day, after having passed last year hundreds of thousands of dollars for claims against the State, there stands upon the record over a million of dollars of claims against the State, and that they are still coming up as thick as locusts in Egypt from every portion of the State where a canal is to be found to-day. In my own locality for instance, I have been besieged within the last month by more than twenty individuals who have found out that in certain cases some other individuals have got very handsome sums of money from the State for damages arising from the canals—in some instances damages to a greater amount than the whole value of the property, and who have come to me and requested that I would put them on the track whereby they could come to the Legislature and get an enabling act, so that they could go to the appraisers and obtain like sums. Sir, there is no end to these claims; they are constantly leeching upon the State treasury, and they have been for the last twenty-five years growing worse and worse every day. The claims against the people of the State of New York under the laws passed by the Legislature are to-day greater in amount since the canals were completed than they ever were at any time before, and I venture to say that if, by implication or in any other way we give the Legislature the right to pass upon these questions, and to give these parties who are thus seeking damages for injury sustained to their property along the line of the canal relief, these claims will increase in value from this time henceforth until the memory of the present generation will have passed away from them by death. Now, it is for the purpose of guarding against this very thing that we desire to have it understood that the State of New York, as a beneficent sovereign, has put this artificial river through the length and breadth of the State, thereby increasing the value of property to three or four times what it was formerly, and that it is unjust that it should be called upon now to pay any remuneration for these damages which may occur along the line of this great highway. The gentleman from Ulster [Mr. Schoonmaker], the colleague of the gentleman who has last spoken, mentioned a case upon the Chemung river in 1865. I know something about that case. The Legislature of the State of New York passed a law, not authorizing but requiring the canal board to go and examine that matter, and if they should come to the conclusion, from the proof that an individual under like

circumstances would be liable, then the State must be liable, also, and pay these damages. There is no difficulty in getting proof in these cases—not the least in the world. The canal board must sit and hear the testimony of the entire community, without a single objection from the lips of a single individual, though he may live in the locality—all swearing directly through under the most rigid cross-examination you can possibly give them, so that you could not avoid coming to the conclusion that unless the entire community, otherwise reputable and honorable and high-minded men, were perjured, the State were bound, under the strict construction of the law passed by the Legislature, to give them the damages.

Mr. MAGEE—I understand the gentleman to say that a general law was passed. The laws passed were special, for the benefit of particular parties, and not general. I was myself a sufferer to the extent of over thirty thousand dollars. It swept away every thing—machine shop and every thing else; and I never got a dollar, for I never asked for it, and did not believe I was entitled to it.

Mr. ALVORD—The gentleman did not understand me. They were special laws. Two special laws were passed, and afterward another one was passed. Whether the volume of water in the Chemung river was greater by far than it had ever been before, or not, in my mind there is no serious doubt but what the destruction there would at least have been very considerable if the State had not gone on, and by its public works there built up this property. This village of Corning and the property in its immediate vicinity were benefited by the public works there; and yet the State paid, under the three special acts which were passed, over \$100,000; and I know that if I had been upon the floor of the Legislature I should have held there, that as an abstract question, the State should not have paid one single dollar of that money, not one dollar. But they did pay it. The canal board were tied up, and could not by any possibility get round making the award under the circumstances.

Mr. MAGEE—Will the gentleman allow me one moment? When that flood occurred, I was right in the midst of it. The valleys of the rivers forming the Chemung were filled, and the lands were submerged for twenty or thirty miles up. Every thing was swept off. Railroad tracks were taken up and washed away. I know that I lost more than two miles of track, that I have never seen since, and I do not know where it went to. The iron rails were swept down the river. For twenty or thirty miles every thing was submerged and swept away, bridges and railroads and all. Yet the State have paid the sum you mentioned for the damage caused by the State.

Mr. ALVORD—It has been often said that so far as regards the beautiful village of Corning, that it is a very rich village; that it is burned up one year and gets what it is worth from the insurance companies, and the next year it is flooded, and gets what it is worth from the State.

Mr. MAGEE—You are pretty near right in that.

Mr. ALVORD—Cases of this kind come before the canal board, under the act passed by the Legislature. A party had a large amount of timber brought to the head of the feeder, running from Corning this way. He brought it there two or three days before the advertised opening of the canals of this State. The canal collector at that point, on the day of the advertised opening, took the toll upon a part of this property. But owing to some difficulty lower down the canal, the superintendent came to the conclusion that it would not be politic on the part of the State to admit these tows upon the feeder. The party went on for twelve or thirteen days, every day going and asking permission to go upon the feeder; but the answer was: "We will let you on to-morrow, if possible; we are at work, but we shall probably have the canal in the right shape so that you can go on to-morrow." On the eleventh day there came a great rain, and a very great flood upon that river, and that property was all swept down the river and destroyed. The party came to the Legislature, and upon the ground that the State officer had taken the toll, and that the State, through the canal commissioners, had advertised that the canal was to be opened, on the first day of May, and that he desired to go upon the canal then and was not allowed, therefore the State was held to be liable, and should be put in the same position as an individual, and if the facts were found as stated by the claimant in this case, the canal board were required to pay him. I hold that the State of New York ought never to have paid one dollar in that case. But there was the law, imperative in its terms, dictating exactly what the canal board should do; and they could not by any possibility avoid it. There was no sort of question with regard to the evidence. There was cumulative evidence, any quantity of it with regard to the matter; and the result was that the State undertook to stand in the relation of an insurer of the property of that individual.

Mr. MAGEE—The men got paid for three times as much as they ever had.

Mr. ALVORD—That is another question. That has nothing to do with the position I take with reference to the facts relating to this case. There is another thing. The State opens its canals for navigation. I go along on the line of the canal with a boat loaded with stones—an open boat. My friend from Ulster follows directly behind me with a boat loaded with wheat. Accidentally striking my boat against the bank, over goes one of the stones, and strikes the bottom of the canal. My friend runs his boat upon that stone, staves his boat in, and loses his cargo. There are cases upon cases on record of that kind, which the State of New York have relieved. There is this fact, plain and palpable, that where these claims have been allowed by the Legislature, in almost all cases where they have allowed large amounts of damages, at the expense of the State, there have been no real grounds for those damages on the part of the claimants.

Mr. COOKE—With regard to that latter class of damages, the gentleman will understand that I do not object to retaining the provision as it is

TUESDAY, November 19, 1867.

The Convention re-assembled at 9 o'clock A. M.
Prayer was offered by the Rev. AMBROSE O'NEILL.

Mr. GOULD asked leave of absence for Mr. Hale during the remainder of this week.

There being no objection, leave was granted.

Mr. S. TOWNSEND—The resolution which I offered with reference to separate submission was laid upon the table at my instance. That is a nice and important point. I have no idea that the sense of the Convention is against the principle; on the contrary, I expect the resolution to be passed; not unanimously, but by a large vote; whereas, one of our recording paid agents has so expressed the vote as to indicate that it was virtually laid upon the table by the vote of this body. That is not so, but it was done by the suggestion of the mover in its incipency.

The PRESIDENT—The Chair so understood it, and it was so recorded.

Mr. LEE presented the remonstrance of the trustees and teachers of the Mexico Academy against the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. GRAVES offered the following resolutions:

Resolved, That in the opinion of this Convention, it is due to the credit of the State that the examination commenced before the Senate committee, to ascertain the number and extent of frauds committed against the interest of the State, should be vigilantly and faithfully continued before that committee, or some other duly appointed, until the offenders shall be publicly exposed or brought to merited punishment, and the integrity of the State fully vindicated.

Resolved, That, in the opinion of this Convention, it is the duty of the Attorney-General to ascertain, as far as possible, all contracts with the State which have been obtained by fraud or by fraudulent appliances, and cause the same to be revoked or annulled.

The PRESIDENT announced the question on the adoption of the resolution.

Mr. GRAVES—I offer this resolution that the committee that has had the matter in charge may more fully investigate the subject-matter submitted to them. It seems to me quite important that the examination should be continued and that the offenders should be brought to justice, and that any iniquity in the contracts should be exposed. The second resolution contemplates that the Attorney-General shall inquire into the character and extent of these contracts, the nature of them, and how far they are fraudulent; and if, in his judgment, it is proper that these contracts should be annulled, that he should see that they are annulled. It seems to me that the passage of this resolution is quite important to fully vindicate the character and integrity of the State.

Mr. S. TOWNSEND—Before voting upon the resolution I would like to inquire whether it would not be fully as appropriate to inquire of the Attorney-General, or of some friend of the Attorney-General, for some reason why he has not responded to a similar resolution of this body,

in the section. In damages arising from the actual navigation of the canal, I am willing to assume that when a man takes his boat upon the canal, he takes the canal for better or worse, and knows the kind of navigation that he is liable to find and the kind of business that is done, and he takes the risk. But the cases I propose to strike out are the cases where it is provided against allowing anything for damages resulting directly from the canal to an individual who is not connected with it.

Mr. ALVORD—I will state to the gentleman a case in point in reference to the proposition I have just made, and ask the gentleman whether it is not a case of damage to somebody not on the canal. The State compels parties to go into the weigh lock, and in two or three instances the Legislature has relieved parties under these circumstances, that where the parties have gone into the weigh lock, it has given way and destroyed the cargo and destroyed the boat. The Legislature have granted relief also in cases like this. In very many cases there has been great damage to property from the breaking away of the canal, all along up the Mohawk, for instance, in times gone by; when there was no sort of question, after the flood was over, but that the river, as well as the canal, was over its banks; but because the canal was overflowed first, it was held that the damage was done by the canal's breaking through, and the parties got the damages they asked for. There is no way, in my opinion, to get hold of this rightly, except to compel individuals to go where they should go, to the officer in charge of the canals of the State, for their remedy for those injuries. The State must get rid, in some way or other, of these claims, or the cost of the maintenance of these canals, in consequence of those claims for damages, will subject the people of the State, for years to come, to an enormous amount of tolls for the very purpose of meeting these exigencies. They are increasing every year. They are not diminishing. I trust we shall pause and hesitate a great while before we come to the conclusion that there shall not be some sort of provision—I am not tenacious about the exact words here—some sort of provision by means of which we shall provide for the safety of this State.

Mr. AXTELL moved that the committee rise, report progress, and ask leave to sit again.

The question was put on the motion, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. MERRITT, from the Committee of the Whole on so much of the report of the Committee on Canals as relates to their care and management, reported that the committee had had the same under consideration, and had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave to sit again, and it was declared carried.

On motion of Mr. A. F. ALLEN, the Convention adjourned.

which was offered some two months ago, requiring or suggesting that criminal proceedings should be instituted against culpable State officers. I think that touches the marrow of the matter, and that, if we cannot reach it in that way, it is of very little use to pass collateral resolutions. I should like to know of some gentleman who can speak for the Attorney-General what his opinion is upon that point. I should like also to have the Committee on Frauds and Corruptions of this body act upon the matter, for we have more control over them than the Assembly or the Senate. I would inquire if either committee, or any gentleman, is prepared to make a statement upon that subject?

Mr. ARCHER—The report of the matter on the part of the Attorney-General has been published in one of the daily papers of this city; and I will state that the Attorney-General, after the resolution passed by the Convention on my motion, addressed a note to the contracting board, reciting the terms of the resolution and asking for instructions from that board, in order to proceed with the investigation. They replied at length, virtually denying the jurisdiction, or rather declining to do any thing in the premises. This was published in one of the papers during our recess. I have it not before me now, but I remember the substance of it as it appeared.

The PRESIDENT—The Chair will state that the report of the Attorney-General is with the Secretary, in his desk, sent in last week.

Mr. S. TOWNSEND—It does seem to me that it would be better for this Convention to transact the business for which it was called together, rather than to be passing flying resolutions in regard to matters that are certainly more properly under the care and control of officers and agents of the people elected expressly for such purpose. It seems somewhat inappropriate sending directions and queries to an Attorney-General who has substantially decided we have no legal existence. It is probably useless to attempt to limit discussion; but, for one, I hope if this resolution shall pass, the members of the Convention will not introduce many of such resolutions, but that we shall be left to pursue the business properly for which we have assembled.

Mr. GRAVES—Mr. President—

Mr. C. C. DWIGHT—I rise to a point of order, that the resolution giving rise to debate, it should lie over.

The PRESIDENT—The Chair rules that the point of order is well taken, and the resolution must lie over under the rule.

Mr. McDONALD offered the following as an additional rule of the Convention:

Immediately after the reading of the Journal in every morning's session, and at the commencement of every other session, the roll of this Convention shall be called, and the names of all the members absent, either with or without leave, shall be reported thus absent, as the fact may be, both in the Journal and *verbatim* reports.

On motion of Mr. McDONALD, the resolution was referred to the Committee on Rules.

Mr. COLAHAN—I wish to call up a resolution offered by me on the 22d of August last.

The resolution was read by the SECRETARY, as follows:

WHEREAS, A complete system of education and instruction is indispensably essential to all applicants for admission to practice medicine in this State; and

WHEREAS, At the present time the profession of medicine is suffering in repute, position and ability, owing to the loose manner in which licenses to practice are granted, and to the few qualifications that are considered prerequisites to the granting of diplomas by the several institutions vested with such power; and

WHEREAS, Influence, political and social, often affects the distribution of diplomas, to the ignoring and disappreciation of character and ability; and

WHEREAS, Under the present system, graduates, or more properly termed *vendees*, from such notably inefficient institutions as that of Castleton, Vermont (on the payment of \$50, and with hardly time enough spent for an apology for study), can practice medicine in our State without further qualifications; and for the reason of the great injuries resulting to the people at large from these causes, and of the increasing want of some protection and safeguard to the profession of medicine itself, and to the public;

Resolved, That two boards of examination be created, to consist each of five members, to be selected from the most reputable practitioners or professors in allopathy, and five from the practitioners or professors of homeopathy. The members of said boards to be nominated by the Governor and confirmed by the Senate. The Legislature to determine the compensation and term of office of such members, and also the times of each year when examination of candidates shall take place. That in the future no person be permitted to practice medicine in this State who shall not have passed a satisfactory examination before either of said boards so created.

Mr. COLAHAN—I desire, Mr. President, to offer a substitute for the resolution, which I will send to the Secretary.

The SECRETARY proceeded to read the substitute, as follows:

Resolved, That the following section be referred to the Committee on Revision and embodied in the proposed amendments to the Constitution of this State:

SEC. —. At the first assembling of the Legislature of this State after the adoption by the people of the amendments made by this Convention to the Constitution, the Governor, with the consent of the Senate, shall appoint two State medical boards. One of said boards shall be composed of three members of the medical profession, of the homeopathic school; the other shall be composed of five members of the medical profession of the allopathic or old school of medicine. No person shall hereafter be permitted to practice medicine in this State, unless after having passed a satisfactory examination in physic and surgery before either of the before-mentioned boards. This provision, however, is not to affect any practicing physician now duly authorized to practice by any legally constituted college of this State. The respective pharmaceutical societies of this

State, duly incorporated, according to law, shall have full power to license apothecaries and druggists, and no person shall hereafter dispense or compound drugs without a license from a pharmaceutical society, as before referred to. The Legislature shall regulate the terms of office and compensation of the members of the said medical boards, and direct a uniform system of examination to be made by pharmaceutical societies of all applicants for permission to dispense and compound drugs in this State, and have all further power to effect the carrying out of the intentment of this section. The Legislature shall make it a criminal offense, with any additional penalty, for any person to violate the provisions of this section.

Mr. COLAHAN—I would have called this resolution from the table at an earlier time were it not that I awaited the disposition of the reports of the Committees on Finance and Canals. This disposition not being made in the time I anticipated, I am compelled, in justice to the subject of the resolution, to call it up for action this morning. The subject-matter of the resolution itself is somewhat out of the channel of matter that has been heretofore acted upon by this body, and interests vitally every inhabitant of this State. It is not cramped with the shackles of political expediency, and with its just determination would not carry one harmful effect to the depository of hopeful prospects of either of the great political parties in this State. That the medical profession of this State is in a condition of decline; that medicine is distributed carelessly and ignorantly and to the destruction of our people; that there is a practical remedy, and that this body should effect the same, I will endeavor to show in the few remarks I am about making. Nearly two thousand years ago, Josus the son of Sirack, pronounced "that the skill of the physician shall lift up his head; and in the sight of great men he shall be in admiration." In this country, more than any other to all appearances, if there is not State protection given, these words are destined to lose much of their truth. For the better and readier understanding of the subject, I will refer briefly to the more important laws made by our State on the practice and dispensing of medicine. Since 1760, when the first law was passed purposing to regulate the practice of medicine in the city of New York, and up to the present day, legislation in our State on this subject has been ambiguous, indefinite and insufficient. It was first enacted that none should practice medicine unless he passed an examination in physic and surgery, and was admitted by one of his majesty's council, the judges of the supreme court, the attorney-general, and the mayor of the city of New York; or by any three of them, taking to their assistance for such examination, such person or persons, as they, in their discretion, shall think fit. There was a penalty of £5, with costs, against any person practicing without such testimonials. It will be remarked that under the provisions of this law, the applicant was admitted by a board that knew nothing of medicine, being composed of those from other stations in life, and the penalty against quacks, but £5. In 1792 a law was passed which required two years' study

with some authorized physician. Under this act, the physician without the proper testimonials, or in other words, the quack, had no legal claim for compensation for his services. In 1797 the first act was passed affecting the State generally. This law required the filing of the certificate of admission; also, that the student served an apprenticeship of four years' study with one or more respectable physicians. The physician or physicians had to make oath to the fact. In 1806, the law was passed creating medical societies. This act with some later amendments is the basis of the present system of legislation on this subject. Under its provisions, county societies and the State medical association were created. All of these corporate bodies were invested with power to appoint censors to examine candidates and grant licenses. In 1813 all previous acts affecting the practice of medicine were consolidated. Five or more so called medical men could and can now club together, organize a county society and establish any regulations almost they please. In a few cases such action has been beneficial, but in others it has been just the contrary. This system is too diffuse and lacks the essential of permanent responsibility. In 1853, a law was passed which gave power to the trustees of every college incorporated, pursuant to the provisions of this law to grant and confer the degree of doctor of medicine, upon the recommendation of the board of professors of such college, and of at least three curators of the medical profession appointed by such trustees. This is the law under which colleges grant medical diplomas at the present time. The qualifications called for are; being twenty-one years of age, of good moral character, having received an English education, having pursued the study of medicine and the sciences connected therewith for three years after the age of sixteen—and having received instruction from some physician and surgeon until he said student—was qualified to enter a medical college, and having attended two complete courses of lectures delivered in some incorporated college. The only difference between the county society and the college is, the former has power only to grant a license to practice, the latter can confer the degree of M. D. Under this legislation, the power of conferring degrees and licensing is so general that too much competition exists and there is too little concentration of responsibility. There is too large a market for medical aspirants, and of the many roads that are thus made to lead by the Temple of Esculapius, the candidate for medical indoctrination will most certainly select that which is easiest trodden and leads him soonest to the object of his desires. Our medical colleges to-day are in competition, not to graduate students of ability and worth, but to manufacture doctors of medicine by the quantity. The clause of the law calling for a good English education has gone into disuse and become obsolete. Instruction from a physician before entering a medical college is not required, and the colleges have nearly all relaxed so much of their rigidity in the three years' study that respectable professional men pronounce the whole system a farce. The law does not prescribe any system of

study, but leaves the whole matter of instruction in the hands of these various rivaling institutions. So that, as these institutions increase, the labor of study will be lessened, as an increased supply of goods tends to depreciate their value in the market. Many of these institutions have able and praiseworthy men at their heads, but they cannot establish necessary regulations and rules, because the State does not support their efforts. Were any of them to exact proper study and qualifications, their amphitheatres or students' benches would be vacant, for other institutions could give candidates as much authority in less time, and upon a great deal cheaper terms. On the subject of our college system, the *Medical Record* of June 15th of the present year, says:

"It is too well known that under the existing system of admitting students to our medical colleges, the only desire seems to be to have a large class and swell the treasurer's account. Every means is taken to attract young men to the study of medicine, without taking into account their fitness for the undertaking. The result of all this is, that the number of students is in the aggregate very large, and the amount of brains they represent very small. There have been no measures adopted heretofore to ascertain the fitness of any would-be student of medicine for his prospective tasks in a medical college, other than the ability to write his name legibly upon the matriculation book. By that act he becomes a matriculant of the college, becomes accountable for the fees of his tuition, and that is all that is required of him."

Another great evil is that of permitting individuals to practice medicine in our State, who claim to be graduates from institutions in other States, but who, in most cases, are only itinerant quacks, possessing neither qualifications nor reputation. There are colleges not many miles from portions of this State, where any person, upon a few months boarding and the payment of a small sum of money, can obtain a diploma to practice medicine, and this diploma is the highest and best compliance with our laws for the protection of the medical profession and the public. That there should be some restriction placed upon such individuals practicing medicine in our State without examination or license will be made somewhat patent by the following peculiar, interesting and truthful letter. It was read at the last annual meeting of the British Medical Association, in the city of Dublin. Sir Dominic Carrigan, in his opening address, before reading this letter, took occasion to censure the facility with which diplomas could be purchased in the United States. The letter read:

"EWING PLACE, GLASGOW, July 24, 1867.

"Dear Sir: After having had the pleasure of your note of the sixth instant, I write to you in direct course. I stated in terms of my said letter that no university but that of the State of Pennsylvania gave degrees of medical doctor *in absentia*, the cost being £32 12s. in full of all demands, and delivered free. I will cheerfully assist you or your friend in obtaining the object in view. As I have four new degrees to get at Pennsylvania next week, please send me £32 12s. for the

Pennsylvania degree, and I will send all the requisites to you in course. I am, my dear sir,

"Truly yours, ——— M. D."

In relation to charlatans, or those who have no qualifications or authority to practice medicine, the following evasive and evil enactments exist on our statute books:

"All persons not licensed, who shall practice, or attempt to practice, as a physician or surgeon, or who shall prescribe for or administer medicine or specifics for the sick, shall be liable for damages in cases of *malpractice*, as if such persons were duly licensed to practice."

"No person shall be liable to any criminal prosecution, or to indictment for practicing physic or surgery without a license, excepting in cases of *malpractice*, or *gross ignorance*, or *immoral conduct* in such practice."

These laws are most remarkable, for they virtually give encouragement to all ignorant persons (possessing sufficient assumption) to engage in tampering with human life. The unauthorized and ignorant are made only to assume the liabilities of an educated, experienced and legally-empowered member of the medical profession. In passing, I am reminded of an anecdote I heard told of the University of Salamanca, which might be applied with truth and grace to some of our institutions. A farmer called upon the president of the university to purchase a diploma for his son, and after paying the price, remarked that the diploma was so cheap he wished to have another for his mule, who was then standing outside. The president replied that the institution had tired of conferring degrees on mules, and now only conferred them on *asses*. What has been the result of all this dereliction on the part of our State? Ask our decimated population; consult the childless, the widowed and the orphan! Read the death rate, and mark the tombstones! Should this not suffice, attend our criminal courts or sit upon a coroner's jury and contemplate the victim of another Dr. Septimus Hunter; the body, while quiet in the sleep of death, still bearing evidences of recent torture and agony; those features contorted in their contest with pain; the blood-stained floor, the surrounding terror-stricken and unconsolable friends; the victor standing with the spoils of his ignorance in his paralyzed and cruel grip, stricken dumb with the realization of his bloody achievement and the consequences of his brutal and fiendish deed. Every day we read of fresh victims to the holocaust of medical quackery. The blossom of morning is blasted before the mantle of night is spread. The recital of another beautiful and promising girl wasted and withered to death in the hands of the abortioner has become as customary as the child's daily errand to school. The record of another flooding to death, or of death from unnecessary or unskillful amputation is almost as common. Such destroyers of humanity and encouragers of sexual criminality advertise perfectly secure in our public journals; and law makers pass on in the bustle of life unobserving and with a silence that bespeaks almost approval. In the hope of secrecy, the child of misery is beguiled to the haunts of the charlatan, and too often, in a subsequent stage of decay, exposure and shame,

this poor wayfarer seeks oblivion and rest by going the way of the suicide. Another subject for the pathetic lines of Hood:

"One more unfortunate,
Weary of breath;
Rashly importunate,
Gone to her death."

The Thomsonian remedy or practice of administering lobelia, was the result of State neglect. This poison hurried many to an early grave. Thomson went so far as to confer diplomas, for the sum of twenty dollars, authorizing others to practice his system. He doctored a patient to death in Massachusetts, but the court acquitted him, giving him credit for an honest intention and the expectation of a cure. But recently we had a pretended doctor in New York city, that had the populace feverish about his *miraculous success*. He lived in sumptuous style, and had people flocking to him for an interview. He received them in one door and passed them out another, singing out the word *cure*, as he hurried each person from him. The lame had to balance themselves or fall; the blind to see or stumble; and so all passed on, faith and imagination helping many until they reached home. The facts were, that when sense returned, the victims found themselves no better, out of pocket, the lame bereft of their crutches, the blind without eye covering, the sore without bandages, and all quietly reflecting on how they had been duped. Many Thomsons are to-day in our midst, extorting money from the ignorant and credulous, hurrying many to an untimely end, and rolling in luxury to the profit of the graveyard. Public attention is only called to the fact when an extraordinary case is brought to light; the grave swallows the sorrowful history of numberless innocent victims, and unconscious and afflicted relatives too often attribute to Providence or natural decay what was but the foul deed of ignorance and brutality. It is a very common practice for apothecaries to refuse making up many prescriptions of our practicing physicians. Such doses would kill or hasten the death of the patient in such instances. How does the poor patient fare where there is a reciprocity of ignorance between apothecary and physician? This is an unfathomable secret, for the doctor's certificate is the passport to the Necropolis; it smothers doubt, and the green sod covers all evidence forever. A greater evil still is the loose manner of regulating the dispensing and compounding of drugs in this State. Every day cases are reported, adding to our death-rate, caused by the ignorance and carelessness of apothecaries. The doctor prescribes paregoric and the apothecary puts up opium. Numerous deaths have occurred in the city of Brooklyn alone from this last cause (owing to lack of knowledge and experience), most of which have been hushed up by influence and money. We have some laws that pretend to regulate the sale and compounding of drugs, but they have been framed in such a manner as to make the whole effort abortive. A case occurred but recently in the city of Brooklyn that deserves mention in this connection. A physician prescribed for a patient suffering from neuralgia a drachm of quinine and one grain of

nux vomica, to be divided into fifteen pills. This was properly made up by the apothecary. More of the medicine being needed, a messenger was sent to another store owned by the same apothecary. The clerk sent from the second store to the first for a copy of the recipe, but the copyist, owing to his ignorance or carelessness, misplaced the quantity, so that the pills compounded by the second party contained a drachm of nux vomica and one grain of quinine. The unfortunate patient swallowed only two doses and died in convulsions a few hours afterward. I do not wish to occupy the time of the Convention in citing further proofs to show the terrible effects of negligence on the part of law-makers to protect the lives of our people. Such a permission to quackery is direct fraud upon the public. The masses suppose the druggist, looking at his great mortar and pestle, his mystic abbreviations, the complications of his laboratory and smelling the blending scents of his shop, to be a man of great learning and skill. In European countries their estimate might be a correct one; but in this State, where every man, with the aid of a little handbook, can become his own lawyer and his own doctor, they shoot far off the mark. Impudence and money are the only requisites for an individual to start the business of pharmacy, and should he advertise liberally and post novel and mysterious bills, he can outrival a Hegeman, whether he kills or cures. In the city of New York a few years ago, an experienced apothecary hired a carpenter to fit up a store for him. Not having sufficient funds to compensate the carpenter, he sold his lease to the man of the saw and hammer, who has pounded with the pestle and rolled pills ever since. A common practice is for apothecaries to employ small boys, and intrust the whole business to them. When the boys discover their impotence and ask for more wages they are discharged, and another brood fill their places. Public security is no consideration—profit to the apothecary is only of importance. In Europe the pharmaceutical business is carefully guarded. Rigid examinations must be passed and experience had, before an individual is permitted to become even an assistant in an apothecary shop. In some countries the person, after giving proofs of his learning and experience, must receive a special State license before he can dispense or compound drugs. The number of druggists are also regulated by population. Mr. Milhau, President of the Pharmaceutical Society of the city of New York, writing to myself, says:

"In France, where the laws regulating the business are strictly enforced, the consequence has been that the pharmacians everywhere, even in the smallest villages, possess a knowledge of chemistry, botany, etc. We in this country have been vastly benefited by their discoveries. For instance, quinine, which is of such vast importance, was discovered by two apothecaries in Paris, Messrs. Pelletier and Caventieu; and many other discoveries could be mentioned, all, perhaps, growing from the salutary laws regulating the profession."

The thorough system of educating students in Europe for the practice of medicine need only be referred to by me. The requisite preliminary

classical education that a student must be possessed of, his subsequent probation in a medical college, and the time of his practical experience before he is intrusted with the lives of patients, are facts known to every member of this Convention. As for myself, I would have every member of the medical profession a classical scholar. I would have him so trained that the ennobling traits of humanity would be prominent in his making up, such as sympathy, charity, conscience and morality, and not a development of sordid desires, not the cultivation of avarice, misanthropy and brutality. The great mistake in our go-ahead policy is, that we are too engrossing, and too unthinking in considering the projects susceptible and beneficial to change. The profession of medicine requires more of the human heart in its composition, than does any other calling in life. The physician of learning and feeling brings consolation to the suffering, and hope to the despondent; carries with him light and joy for afflicted relatives, and is the most indispensable and useful auxiliary to poor, weak humanity. As Allison says: "The extension and improvement of the mechanical arts—the multiplication of railroads, canals and harbors—extraordinary rapidity of internal communication—increasing craving for newspapers, and excitement in all its forms—the general spread of comfort, and universal passion of luxury, afford no antidote whatever against the native corruption of the human heart." No, we require elevating and ennobling knowledge, religious and moral instruction, a familiarity with life, its vanities and shadows, a peering into the past and sufficient wisdom for hope in the future, before we can teach the heart sympathy, and direct the conscience in the path of rectitude. I have read, that in some of our Eastern States, owing to laxity of legislation in protecting life, that the births do not exceed the deaths, and their increase in population is owing altogether to immigration. Now, Mr. President, I wish, and the people ask, that this Convention should seriously consider this subject. I have a project which is not radical in its features, but which I think if adopted will contribute greatly toward ameliorating the condition of the people and of the medical profession. I propose to create two State boards of examiners. One to consist of three of the most reputable practitioners or professors in homeopathy, the other to be composed of five of the most reputable practitioners or professors in allopathy. The members of these boards to be nominated by the Governor and confirmed by the Senate. All persons hereafter to be prohibited from practicing medicine in this State unless they shall have passed a satisfactory examination before either of the before mentioned boards. Excepting however from the provisions of this section, all persons now regularly licensed and authorized by any legally incorporated college of this State. I also ask that the Legislature be directed to make it a misdemeanor for any person to practice or attempt to practice medicine in this State without complying with the provisions of this section. I also propose to confer sole authority upon the respective pharmaceutical societies of this State, duly incorporated according to law—to regulate the dispensing

and compounding of drugs, and to examine and license apothecaries; and to direct the Legislature to make it a misdemeanor or such additional penalty as the Legislature may think fit, for any person hereafter to carry on the business of pharmacy without such license. I leave to the Legislature all powers in relation to the compensation, sessions, system of examination, etc. of the board of examiners, also full control as to the fees and regulations of the pharmaceutical societies. Were these propositions adopted, I have no doubt our action would meet with the approbation of the people of this State. No evil has been more complained of, but the people have so long suffered, that they consider the matter almost remediless. It is a subject in every manner appropriate for this Convention to take cognizance of. One that, with its proper disposition, will bring much popularity to our labors, and awaken the people to the fact that this Convention is in existence. What more has the question of a man's beverage drinking to do with the Constitution than his care and aid while balancing between life and eternity; than the culture and protection of that profession which prolongs the life of the State by prolonging the lives of its inhabitants. Of what more importance the construction of a stone building in the city of Albany to-day or ten years hence; or whether railroads are to link together and without disturbance carry a trunk from New York to Buffalo, or merely to check it with delay from station to intermediate stations. I cannot conceive that the answer will be made, that this is not a subject for our consideration. The Constitution of 1846 provides the prerequisites for admissions to practice law. Section 8 of article 6 says, "Any male citizen of twenty-one years of age, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to admission to practice in all the courts of this State." Is the profession of medicine of any less importance than that of law; is the preservation of a man's life of less importance than that of his property? I myself think not! Learned gentlemen on this floor have spent a great deal of time in tracing the canals to their commencement, and in graphically describing their course to tidal waters. I ask this morning that these gentlemen turn their thoughts to the great tide of humanity; that they visit in mind the haunts of the charlatan, the luxurious apartments of the abortioner, and stand for a moment by the bed of sickness, and watch life slowly stealing away in the hands of malpractice and gross ignorance. After this, I ask these gentlemen whether they will still refuse to use their power and influence in mitigating this great and deadly evil. Many a hearthstone is to-day cheerless, many a domestic group that promised much happiness dissevered, and the State much weakened in body and brain through the terrible ravages of these auxiliaries of death. This subject is philosophical and humanitarian. Man is but a frail thing, living but for the grave, traveling on time in doubt and uncertainty, standing on the strand of that vast ocean of eternity he must sail very soon. Mortality should not be hastened by his own hand, but left to the natural order of

things ordained by Divine Providence. In the language of Gray :

"To Contemplation's sober eye
Such is the race of man:
And they that creep, and they that fly,
Shall end where they began.
Alike the busy and the gay
But flitter through life's little day,
In Fortune's varying colors drest;
Brushed by the hand of rough Mischance,
Or chilled by Age, their airy dance
They leave in dust to rest."

Mr. SMITH—With great respect for the gentleman [Mr. Colahan] who has so eloquently expressed himself, I would desire to suggest that this matter does not belong legitimately to the business of this Convention. It is eminently proper for a legislative body. I trust, therefore, that the further consideration of it may be dispensed with. We have but little time to consummate the work we have come here to do. I trust that our attention may not be diverted from our legitimate business, that we may address ourselves to those matters which properly come within our cognizance, and as soon as possible complete our work, and submit it to the people for their adoption. I, therefore, move that this resolution be laid on the table.

Mr. COLAHAN—I trust that motion will not prevail.

The PRESIDENT—The Chair will inform the gentleman from Kings that the motion is not debatable.

The question was put on the motion of Mr. Smith, and, on a division, it was declared lost by a vote of 45 yeas, the noes not being counted.

Mr. COLAHAN — I rise to a point of order; there is not a quorum voting.

The PRESIDENT—Gentlemen will please vote.

The question was again put, and, on a division, was declared lost by a vote of 55 to 13.

Mr. COLAHAN—There was no quorum voting.

The PRESIDENT—The Secretary will call the roll of the Convention.

The SECRETARY proceeded to call the roll of the Convention and the following delegates responded to their names :

Messrs. A. F. Allen, Alvord, Archer, Axtell, Baker, Barto, Beadle, Beckwith, Bickford, E. Brooks, E. A. Brown, Carpenter, Case, Clarke, Colahan, Comstock, Cooke, Corbett, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Eddy, Ely, Endress, Ferry, Fowler, Francis, Gould, Graves, Hadley, Hale, Hammond, Hand, Harris, Hatch, Hitchcock, Houston, Kinney, A. Lawrence, M. H. Lawrence, Lee, Livingston, Ludington, McDonald, Merritt, Miller, Opdyke, A. J. Parker, C. E. Parker, Pond, Potter, President, Prindle, Prosser, Reynolds, Roy, L. W. Russell, Schell, Schoonmaker, Seaver, Sheldon, Sherman, Smith, M. I. Townsend, S. Townsend, Verplanck, Wakeman, Wales, Williams—70.

There being no quorum present, further proceedings were suspended to await the arrival of other delegates.

Subsequently, the SECRETARY again called the roll of the Convention, when the following delegates answered to their names :

Messrs. A. F. Allen, Alvord, Archer, Axtell, Baker, Barto, Beadle, Beckwith, Bickford, E. Brooks,

E. A. Brown, Carpenter, Case, Cassidy, Clarke, Colahan, Comstock, Cooke, Corbett, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Eddy, Ely, Endress, Ferry, Field, Flagler, Fowler, Francis, Fullerton, Gould, Graves, Hadley, Hale, Hammond, Hand, Harris, Hatch, Hitchcock, Houston, Ketcham, Kinney, Landon, A. Lawrence, M. H. Lawrence, Lee, Livingston, Ludington, Magee, McDonald, Merritt, Miller, Opdyke, C. E. Parker, Pond, Potter, President, Prindle, Prosser, Rathbun, Reynolds, Roy, L. W. Russell, Schell, Schoonmaker, Seaver, Sheldon, Sherman, Smith, M. I. Townsend, S. Townsend, Van Cott, Verplanck, Wakeman, Wales, Williams—78.

There being no quorum present, the PRESIDENT announced that the Convention would take a recess until seven o'clock.

EVENING SESSION.

The Convention reassembled at seven o'clock.

The PRESIDENT stated the question to be on the motion of Mr. Smith to lay upon the table the motion of Mr. Colahan to refer his resolutions to the Committee on Education.

Mr. E. BROOKS—As this is merely a question of reference, I hope the gentleman will withdraw his motion and allow the matter to be referred.

Mr. SMITH—I will state that the resolution instructs the committee to embody it in the constitution. It is mandatory. I have no objection to withdraw my motion, and simply refer the resolution. I will withdraw the motion and move to amend the motion so as to refer.

Mr. ALVORD—Permit me to suggest to the gentleman from Fulton [Mr. Smith] that a reference of the resolution to a committee, whatever it may contain, does not, so far as regards the Convention, commit them to its passage. It is simply a reference. It makes no amendment in the Constitution itself.

Mr. SMITH—I will inform the gentleman that the language of the resolution is that it be referred to that committee, and that they embody the amendment in the Constitution.

Mr. ALVORD—I understand the gentleman to have moved to refer the resolution as it stands, to the Committee on Education.

Mr. SMITH—I did not so understand it. I have no objection to that.

Mr. CURTIS—I would remind the Convention that the Committee on Education has been discharged.

The PRESIDENT—The Committee on Education has been discharged, and this resolution will be referred to the Committee on Revision if there be no objection.

Mr. COLAHAN—The words of that resolution were that it be embodied in the present Constitution. If there is no objection it may as well be referred to the Committee on Revision.

The PRESIDENT—The Chair will inform the gentleman from Kings [Mr. Colahan] that it cannot be embodied in the Constitution without having first, under the rules, been considered in Committee of the Whole. The Committee on Revision can report it for the consideration of the Convention, and then it can take its place upon the general orders and be considered.

Mr. COLAHAN—I will ask for information, whether the Committee on Revision has power to report any matter, or any other power than to revise the language of what is submitted to them?

The PRESIDENT—The Chair would inform the gentleman that the Committee on Revision merely acts upon what has passed the Convention, and the report of the committee goes before the Convention for their subsequent action.

The PRESIDENT—There being no objection, the resolution will be referred to that committee.

Mr. DUGANNE—I will call from the table the resolution offered by me on the 18th of September with reference to the rules of the House.

The PRESIDENT—The Chair is informed that this resolution was tabled by a vote, and the question is upon taking the resolution from the table.

Mr. DUGANNE—It was not tabled by a vote; I requested it to be laid upon the table.

The PRESIDENT—The Chair must be governed by the record of the Secretary. The question will be upon taking the resolution from the table.

Mr. DUGANNE—I withdraw my request, because I wish the matter to be acted upon in full Convention.

Mr. ARCHER—I will call up the report of the Committee on Rules.

The report of the committee was read by the SECRETARY, recommending:

1st. Add to rule 6, "Absentees shall not be called more than once, except in the absence of a quorum."

2d. Amend rule 36 by striking out the word "fifteen" and insert the word "twenty."

3d. Additional rules.

1st. Equivalent propositions shall not be entertained.

2d. No amendment shall be received while another is pending, unless it be an amendment to the amendment, and germane to the subject.

3d. Until otherwise ordered, the hour of meeting shall be at ten o'clock in the morning, the session to continue until two o'clock in the afternoon, when a recess shall be taken until seven o'clock in the evening.

The PRESIDENT stated the question upon agreeing to the report of the committee.

Mr. M. I. TOWNSEND—I move to strike out "seven" and insert "four" in the last line.

Mr. CURTIS—I would like to inquire of the gentleman if he means that the session commencing at four o'clock shall continue indefinitely in the evening, or contemplates an adjournment at sunset.

Mr. M. I. TOWNSEND—My object was to save the keeping of eighty to a hundred men here from two o'clock until seven, literally doing nothing. Believing that God made the day to work in, rather than the night, I prefer, if I have to work, to work in the day, to losing five hours absolutely doing nothing; and as time is valuable, I want to save that time. My proposition would contemplate that the Convention should sit as long after four o'clock as they should deem for the public interest; that we should come together after a rest of two hours and go on with our work.

Mr. CURTIS—I am sure that the motion of the gentleman will not meet the convenience of the Convention so well as the present arrangement, and I hope that his proposition will not prevail.

Mr. M. I. TOWNSEND—Of course I have but one vote to give in regard to this matter, but if being one of those people who believe in sleeping in the hours of the night, I should sometimes fail to be found in my place when I suppose the hour of sleep has arrived, those gentleman who propose to throw away five hours time will not find fault with me.

Mr. GRAVES—I wish to inquire of the gentleman from Rensselaer [Mr. M. I. Townsend] whether he contemplates holding two sessions a day, one from ten to two, and the other from four o'clock until such time as the Convention may choose to adjourn.

Mr. M. I. TOWNSEND—Certainly, I proposed no amendment other than that.

Mr. PROSSER—I move to amend the rule to make the session at half-past three o'clock in the afternoon instead of four. I think we shall accomplish more work by continuing our morning session from ten o'clock until two, and our afternoon session from half-past three until seven, and dispense entirely with the evening sessions.

The question was put upon the amendment offered by Mr. Prosser, and it was declared lost.

The question recurred on the amendment offered by Mr. M. I. Townsend, and it being put, it was declared lost.

The question recurred upon the adoption of the report.

Mr. DUGANNE—I move to amend by striking out the words "and germane to the subject," so that there shall be only one amendment considered at a time. I think we shall expedite business by passing upon every amendment that comes up unless it be merely amendatory to a word.

Mr. ARCHER—This additional rule is in strict conformity with parliamentary usage, and corrects the practice which has grown upon us here of having two independent amendments pending at the same time. It is eminently proper, it seems to me, that this rule should be adopted. An amendment may be proposed, and no other can be proposed while that is pending unless it is germane to it.

Mr. DUGANNE—Do I understand the chairman of the committee that it is to be germane to the amendment or germane to the resolution?

Mr. ARCHER—To the amendment.

Mr. DUGANNE—Then I withdraw my motion.

The question was put upon the question of the adoption of the report of the committee, and it was declared carried.

The Convention again resolved itself into Committee of the Whole, on so much of the report of the Committee on Canals as relates to their care and management, Mr. WEED, of Clinton, in the chair.

The CHAIRMAN announced the pending question to be on the motion by Mr. Kinney, to insert after the word "canals" in the third line of the fifth section, the words "completed on or before the first day of January, 1867."

Mr. KINNEY—The object of the amendment which I proposed is simply to restrict the opera-

tion of this section to the existing canals of the State, and not have it extend to those canals or to that canal now in process of construction.

Mr. BECKWITH—I would suggest to the gentleman to insert the word "existing" before "State canals."

The CHAIRMAN—Does the gentleman accept the amendment?

Mr. KINNEY—I will withdraw my motion and move to amend in the manner suggested, by making it read, "existing canals of the State" wherever the word "canal" occurs.

The question was put upon the motion of Mr. Kinney and it was declared carried.

The question recurred on the motion of Mr. Bickford to strike out all after the word "revenues" in the second line, and insert the word "nor" in the sixth line.

Mr. BICKFORD—I will merely say one word in addition to what has been said. The Convention have seen the propriety of modifying this on the motion of the gentleman from Tioga [Mr. Kinney], and have modified this section as proposed by him. It is on the principle of justice, of course, that it should be so modified. I wish merely to say that cases of as strong justice, as obvious justice, occur on the canals already built, as on those to be built. I wish to say in relation to the particular case I cited, of the bridge authorized by law over the Black river, and which this would cut off, that the State has seen the propriety of that enactment, for it has twice passed the Legislature, and twice been approved by the Governor. The justice of it is acknowledged; and now it is proposed to cut it off by this amendment, and to cut off other similar cases. I have been frequently asked why it was equitable or right that the State should maintain a bridge there; why the towns might not be permitted to build a bridge; why that would not answer all purposes. I answer that if the towns were left to build a bridge they would build merely for their accommodation, such a bridge as the State would not have there at all. The State would not permit such a bridge as towns would build, merely for their own accommodation. It would obstruct navigation, which could not get along at all. If, therefore, they build such a bridge as the State will approve it will be a very costly bridge, compared with the one they would build merely for their own accommodation. There has got to be a draw in it, and it has got to be higher and constructed differently. The cost will be very materially enhanced, and that is because it is built over the canals which the State owns. Now, sir, that additional expense strikes every man whose mind is commonly fair that it should be borne by the State and not by the towns. Is the State going into partnership with the towns to mix this matter up and make two bites of a cherry? Not at all. It is beneath the dignity of the State to do any thing of that kind. The State should control its own affairs, its own property; and if there is to be a bridge built over its canals, the State must build it, wholly at its own expense.

Mr. KETCHAM—I move to strike out all after the word "revenue," in the second line, down to and including the word "nor," in the thirteenth line.

The CHAIRMAN—That constitutes the pending motion.

Mr. KETCHAM—I do not understand the pending amendment to go beyond the sixth line. My amendment is to strike out down to the word "nor" inclusive, in the thirteenth line.

The CHAIRMAN—That is a different motion. The amendment is in order.

Mr. ALVORD—I call for a division.

The CHAIRMAN—What division does the gentleman desire?

Mr. ALVORD—Such as is indicated by the motion of the gentleman from Jefferson [Mr. Bickford], which is a separate and distinct paragraph, relating to a separate and distinct subject.

The CHAIRMAN—The question will be so divided.

Mr. KETCHAM—I do not know but I would as soon allow the vote to be taken on the motion of the gentleman from Jefferson [Mr. Bickford], and make mine as a simple amendment. I therefore withdraw my amendment.

The question was put on the amendment offered by Mr. Bickford, and it was declared lost.

Mr. KETCHAM—I now renew my motion. I move to strike out all after the word "revenues" in the second line, to and including the word "nor" in the thirteenth line. I move this amendment because I think the incorporation of a proposition of the kind embraced in that part of the section I propose to strike out would and ought to insure the rejection of the instrument to be submitted. I think so. First, because it amounts, in my estimation, to a repudiation on the part of the State, of its debts. And second, because I do not believe the people of the State are yet prepared to do so gross an act of injustice to any of its citizens, as to inflict upon them very serious injuries, and at the same time cut off all chance of redress. Third, because it appears to me to be an unheard of encroachment upon the rights of the people, and a palpable violation of a principle hitherto universally recognized by all civilized nations, to wit, that private property shall not be taken for public use without just compensation. I do not desire to make a speech, Mr. Chairman, on this subject, but I do desire to illustrate briefly, and by a few facts, my own ideas of the utter inconsistency of the provision, and I can not do this better than to refer to a few cases of actual occurrence, in which very serious injury has been done to individuals and communities, by the construction or enlargement of the Erie canal, where all remedy and all chance of redress would be entirely cut off by the provisions of this section, if adopted as reported. Suppose, Mr. Chairman, the State should build a canal right along beside my farm, with the water in the canal several feet higher than the surface of the land adjoining. A break occurs and the water overflows my land and destroys my crops or my buildings, am I to receive no compensation? Let me cite a case in point which actually occurred recently. In the construction of the enlarged canal, at Oriskany it is built across the bed of a small stream, which is carried under the canal by a culvert, the water in the canal for a considerable distance being several feet higher than the land adjoining. A short distance from

this stream, and below the canal, but quite beyond the reach of high water in the stream, are the buildings of Mrs. Mary Henesey, a widow woman in moderate but comfortable circumstances. In 1865, during a freshet, the ice and flood wood so obstructed the flow of water through this culvert, as to cause it to overflow the banks of the canal outside the original channel of the stream, and this Mrs. Henesey awoke one morning to find her barn and cellar filled with water, four head of cattle drowned in the barn, and horses and other cattle saved from the same fate only by having broken loose from their fastenings and swam till they got on top of the hay mow, and other very serious damages done, such as the destruction of a large quantity of hay and the undermining of the house and barn. These are the facts of the case as I gather them from the testimony taken by the canal appraisers. Now, sir, under the provisions of this section, as reported by the committee, she must submit to this great loss, and no compensation could be awarded her whatever. Is there any fairness or justice in this? Nay, sir, would it not be downright dishonesty? I do not believe, sir, the people of this State have yet reached that point of inhuman injustice which would deprive this poor widow woman of her property thus, without redress, because in its might the State had seen fit to construct a canal past and above her premises for the benefit of the public. This, Mr. Chairman, is by no means the only case of the kind. I know of others, and I presume my honorable friend from Chemung [Mr. E. P. Brooks], with no very great tax upon his recollection, could name many cases similar which have come to his knowledge as canal appraiser, and I venture to say other honorable members living on the line of the canals can readily call to mind others similar in many respects, if not in all. I will mention one other case, Mr. Chairman, of more importance, because it is more extensive in its operations and affects a larger number of people. In the Erie canal enlargement across what is known as the Montezuma or Cayuga marshes, the State had built a splendid monument of architectural skill, pronounced by Hon. Wm. B. Taylor, late State Engineer, "the most interesting structure on the whole line" of the canal. It bears the name of an honored citizen of my native county, and it certainly does great credit to his professional skill and ability. I refer to the Richmond aqueduct, so called. This structure was built for the purpose of carrying the waters of the canal across the waters of the Clyde river, the Seneca river and the Cayuga outlet. Each side of this the canal is built across the marsh by raising an embankment on each side of the canal thirteen feet in height. In reference to this, Mr. Taylor, in his annual report for 1862, says:

"This portion is the most interesting piece of work on the whole line. The level extends from Port Byron to Clyde, sixteen miles, seven of which the canal is carried over the Cayuga marshes and low timbered lands *three feet below canal bottom—the banks rising thirteen feet above the marsh.*"

At pages 113 and 114 of the report of the canal commissioners for the year 1858, it is described thus:

"The river, where it is crossed by the canal, is divided by Kipp's island into two channels. Into the west channel empties the Canandaigua river; this channel has been filled up, and to provide for the water that formerly flowed through it, a cut of about one hundred and fifty feet wide has been made across the island above the canal, and all the water thereby carried to the east channel. The west channel, by Kipp's island, is commonly called the Canandaigua river down to its junction with the other channel. The east channel is usually known as the Seneca river. The west or Canandaigua (or Clyde) channel was deep for its whole length, averaging at low water about sixteen feet. The east or Seneca channel is shallow, averaging in low water less than four feet in depth.

"The effect of carrying all this water into the east channel is to dam it up. So that on the 7th day of November, 1857, there were two feet difference in the level of the surface of the river, above and below the enlarged canal where it crosses the Canandaigua channel or Clyde river.

"By the 14th day of November the water flowing freely over the old canal, from the lock near the Canandaigua channel" (or Clyde river), "westward, all the way across the marshes, for a depth over the tow-path of more than two feet. At this time the embankment of the enlarged canal reached only about half way across the marsh, thus giving a cross section of at least 15,000 feet. It is further stated, in this connection, that at this time the water stood two feet and sixteen-hundredths above the under side of the trunk of the aqueduct (at Montezuma), with a free passage of 15,000 feet over the marshes. The completion of the embankment for the canal closed this 15,000 feet of water-way and forced all the water into the east channel and under the aqueduct, and greatly lessened for all time to come the space through which the waters of the rivers must flow. It is manifest that the construction of the enlarged canal across these marshes has materially obstructed the flow of the water."

It will be seen, Mr. Chairman, that all the water from this channel, of *over sixteen feet in depth* is forced to seek an outlet through the other channel of *less than four feet in depth*, reducing the capacity for its discharge more than three-fourths. The natural descent of the marsh from Cayuga lake north is five inches to the mile. I quote again from page 80 of the report of the canal commissioners for 1862:

"A declivity in the direction of the flow of the water of five inches to the mile must have allowed a vast quantity to pass, when it was from two to three feet deep for the whole width of the marsh, which is not less than 15,000 feet wide."

Hon. George Geddes, one of the best practical engineers in the State, who has probably had greater experience in connection with this matter than any other, in a report to the canal commissioners to be found in their annual report for 1858, in alluding to a plan for obviating the difficulties resulting from this work, which I regret was subsequently abandoned, says that but for carrying out that plan, it is difficult to see how "to prevent the enlarged canal from damming up the river in high water, to the great injury of the

lands above, to and including Ithaca" (and he might have added Clyde), "without very great cost in opening a wide and deep channel as low down the river as Campbell's island." In 1857, as appears by the report of the canal commissioners before referred to, page 112, the water passing over where the canal and aqueduct now are, was 15,269 cubic feet per second, over fifty per cent more than that taken as the maximum flow of the river for a basis of all calculations for the construction of the Richmond aqueduct, and embankment across the marsh. Again, in the same report, page 115, I read as follows:

"The obligation resting on the State to save harmless the owners of lands above the aqueduct appears to have been conceded; and in 1858 a law was passed (chap. 179), directing the commissioners to dredge out the channel of the river for a sufficient distance above and below the aqueduct constructed for the purpose of carrying the Erie canal over the Seneca, Canandaigua and Clyde rivers, so as to allow the waters of these rivers at all times to pass off without obstruction or impediment, and as freely as they would naturally do if no improvement for the purposes of the canal were made; and the expense shall be paid out of any money appropriated to the enlargement of the Erie canal."

Now, Mr. Chairman, by this work of the State there are from 10,000 to 15,000 acres of land overflowed, hundreds of acres of which, before the construction of this work, were good arable lands or the best of meadow and pasture lands, on which might then be seen growing as fine corn and other grain crops as ever grew in all that fertile valley, and where now is to be found but flags and cat-tails; and hundreds of acres of land, before good, thrifty, growing timber land, where now is to be found scarcely a green leaf, but, instead dead and decaying trees, and in many instances rendered inaccessible by the increased overflow caused by this work. I have had a little experience in the trial of claims before the canal appraisers and canal board, and on several occasions it has become necessary to call the attention of the canal appraisers to this subject of injuries resulting from the construction of this work, and I find in the report of the canal appraisers submitted to the Legislature at its last session, on pages 8 and 9 (their report for 1866), they refer to this subject in the following language (Senate Doc. No. 33):

"*The Montezuma Aqueduct*—The present board have heard a large number of claims arising from the construction of the aqueduct across the Seneca river, near Montezuma. The claimants allege that the channel of that stream, and also of the Canandaigua outlet, or Clyde river, were so contracted by this work as to obstruct the natural flow of the water, and to set the same back upon the lands lying upon the margins of these streams; and the appraisers are satisfied, that the claimants are in a measure correct. Tracts of timber, formerly in a healthy condition, are filled with trees decayed and dying. In some cases, almost all the timber is destroyed. Farming lands, too, which their owners cultivated previous to the construction of this aqueduct and the new line of canal connected therewith, have

been rendered unillable, and fair pasture land has been utterly ruined. Now, in view of these facts, what were the appraisers to do? Could they, under the law, refuse to hear these claims, or hearing them, decline to award damages? Could they treat witnesses testifying to this condition of things as guilty of perjury? Nay, could they discredit the evidence of their own senses? The appraisers have not so understood their duty.

"The appraisers have no doubt that the water has been permanently raised in the Cayuga lake and Seneca river by the construction of this aqueduct, nor is there a question in their minds that the closing of the channel of the Clyde river, and the opening of a new and insufficient one, has had the effect to raise the water in that stream, and if it does not keep it higher the year round, it holds it longer in the spring, indeed at all times when there is a heavy rain. The inhabitants living upon the banks of this river, claim that the land is seriously affected by this cause, as far up as the village of Clyde, a distance of about ten miles. If this is so, it is a question worthy of serious consideration, whether it would not, even now, be more economical for the State to construct one or more culverts under the canal, of sufficient capacity to pass the water of this river to the Seneca river in its original channel, than to pay the damages which are likely to be established by the claimants. The Clyde river is a very sluggish stream, and it flows through a low, level section of land, which, when the river ran in its natural channel, was only a trifle higher than the surface of the water. Of course, a very slight obstruction would have the effect both to raise and to hold the water upon the adjoining lands. These being barely high enough above the water, before the State changed the outlet of the river (and, as is claimed, dammed it) not to be swampy and unillable, it is alleged that the damming and consequent raising of the water, has injuriously affected several thousand acres. The appraisers have heard the claims of a few individuals residing in this section, but they have been disinclined to award damages to the full extent proven. They have preferred to hold the claims until an opportunity shall be afforded them to make a thorough personal examination of the valley through which the Clyde river flows."

Now, Mr. Chairman, for all these injuries, all this damage, should those who suffer it have no redress? Are citizens living on the Clyde river, for a distance of ten miles, and those living on the Seneca river, and Cayuga outlet and lake for a distance of forty miles, to have their lands destroyed, to be robbed in some instances of the hard earnings of a life-time, by the strong arm of the State, and denied the poor consolation of a *partial* compensation? On a former occasion I said, Mr. Chairman, that I believed, as a general thing, the State had suffered less in amount, and more seldom, than individuals, in the adjustment and award of claims for damages growing out of injuries resulting from the construction and use of the canals. I now say, sir, that when we consider that this injury, unless remedied by some action on the part of the State, like that provided for by the law of 1858, to which I have referred, or that suggested

by the canal appraisers which I have read, is to continue for all time to come, and to increase from year to year, claimants have not thus far obtained a tiche of the compensation to which they were justly entitled. Nay, sir, human calculation is almost inadequate to the task of estimating the extent of the injury. Why, sir, I know of one case where a fine timber lot of considerable extent, on which damages were awarded to the amount of thirteen dollars per acre, which, but for the construction of this work would be worth one hundred dollars per acre, for which the owner cannot now get ten dollars. And this, sir, is no isolated case. There are hundreds of them, and I presume, yes, I *know*, the locality in which I live is not the only region thus affected. They are scattered all along the lines of all the canals; and are all the just claims to be cut off because some unjust, exorbitant or dishonest claims have been allowed? I hope not. I do hope, Mr. Chairman, this Convention will not insert in the organic law of the land an inhibition against so palpable and obvious an act of justice and common honesty, on the part of the State, as that of compensating its citizens for this compulsory contribution of their private property for the use and benefit of the public. I feel sure, sir, it would engage the earnest opposition of a large number of voters, to the adoption of the Constitution to be submitted, who would otherwise support it. Every body on the line of the canal would, as I *think very properly*, oppose it, if submitted with this clause embraced.

Mr. ALVORD—I believe that the gentleman's motion is to strike out from the word "for" in the sixth line down to, and including the word "from."

Mr. KETCHAM—It was to strike out from the word "revenues" in the second line to, and including the word "nor" in the thirteenth line.

Mr. ALVORD—The committee have already agreed that so far as the words "nor" in the second line down to "1867" in the sixth line is concerned, they shall not be stricken out. I rise to a point of order.

The CHAIRMAN—The gentleman will state his point of order.

Mr. ALVORD—The point of order is that the committee have already determined that these words shall not be stricken out.

The CHAIRMAN—The Chair is of opinion that the point of order is not well taken. The committee might determine if the latter part was left in, they would not strike out the latter part.

Mr. ALVORD—Then I call for a division of the question at the words "1867" in the sixth line, and again at the word "therewith" in the eighth line.

The CHAIRMAN—The Chair will call for a division.

Mr. ALVORD—I will take up the case which the gentleman has mentioned; the celebrated case of Mary Hennesy; I know something about it. I happened to be in the Senate as its presiding officer at that time. The case went to the Committee of Claims; it was sent back the second time, and reported against: the report of the committee was agreed to. The motion to reconsider was laid on the table. But by the great anxiety

of the Senator having the matter in charge, a very worthy gentleman, and a very great sympathy, and nothing but sympathy, the bill was passed. There was no question that if that property had been in a state of nature, it would have been entirely submerged by the great flood of 1865; so that it could not be attributed in that individual case to the canal. The property simply happened to be in the neighborhood of a culvert, and the probability is that on that account, the water came up a little more rapidly than it would otherwise have done. I will undertake to state upon my own responsibility that this bill was got through the Senate as a mere matter of sympathy. It was twice rejected by the committee, the report of the committee agreed to by the Senate, and after being twice moved to a reconsideration, brought up again. So much for the Mary Hennesy case. Now in regard to the other case of which the gentleman speaks, I ask him to go home to his constituents, to the people of Clyde, to the people of Montezuma, and those around that section and ask them: Will you submit to the inconvenience occasioned by the building of this magnificent work across there and pay your own damages, or will you demand of the State of New York, rather than pay these damages, that they do away with these works entirely? I do not want to enter into a controversy with the gentleman from Wayne [Mr. Ketcham].

Mr. KETCHAM—Will the gentleman give way a moment?

Mr. ALVORD—I will not. I do not desire to enter into a controversy with the gentleman from Wayne [Mr. Ketcham]. But my recollection of that matter is that it has cost the people of the State for the improvement in that locality more than it would have cost them to buy the entire land in the first place. It has cost them between eighty and a hundred thousand dollars. The channel of the Seneca river was deepened at an enormous expense, besides all incidental damages they have paid parties in connection therewith. It would be better, so far as regards the State of New York, if this idea of damages is to obtain, that we are to pay damages resulting each and every year, that it take the whole section of the country and pay for it at once, call it State land, and draw the blue line around it. The idea of undertaking to pay, year after year, for these things is preposterous in my view of the case. I know a case on the Oneida lake. There is an improvement called the Oneida river improvement. The whole people around there were banded together for the purpose of putting their hands clear up to the armpits into the State treasury. They have gone on and got testimony that, in consequence of the Oneida river improvement, they have been damaged to a large extent along the borders of that lake. The fact is—and there is no doubt in regard to it; and the canal appraisers finally, after having made one or two awards, have come to the conclusion, after investigating the subject, that it is so—the fact is that they have lowered the lake instead of raising it. They gave an award of eight thousand dollars for the end of an island in that lake, when less than three thousand dollars would have built new land by drawing dirt from the main shore, and would

have piled it up a great deal higher than it was before. So it is all around. In all cases where money is granted, to one instance where a party really does not obtain more than the value of the property destroyed, there are ninety-nine cases of the party being paid three or four times as much as the property was ever worth. But I have no sort of question, from the temper and tone of the Convention, that, so far as regards this portion of the report, it must submit to some amendment. I take it that no one will desire, for a single moment, that the clause, "nor for any damage or injury arising from, or on account of the navigation and use of any of the State canals, feeders, or structures connected therewith," should be stricken out. The courts of the State have again and again determined, and Legislature after Legislature has also determined, some of the strongest and ablest minds in the Legislature, commencing with Michael Hoffman as the first one speaking on that subject on a report of the Legislature, and other gentlemen of high standing, position and character, both as legislators and lawyers, have determined that so far as regards this matter, the State should not, under any consideration, be called a common carrier, or an insurer of property upon the line of its canals. That if the people see it to embark thereon with their property, they should run all the risk of dangers and the hazard of navigation. I trust, therefore, so far as regards this mooted question, sometimes decided by the Legislature in one direction, sometimes in another, that we will permit it to go into the Constitution so as to preclude forever thereafter the idea occurring to any party navigating our canals, that in consequence of any damage arising from the navigation of the canals, they can by any possibility call upon the State to respond in damages. Now, I propose, if all of these several propositions made by the gentleman, shall be voted down by the Convention, to amend by inserting at the end of the word "therewith," in the eleventh line, the words, "except by the fault of the officers having charge of the same," so that it will read, "nor for any damage or injury sustained in the navigation or use of any of the canals of this State, or feeders, or structures connected therewith, nor for any damage or injury caused by any breakage or defect in any of the State canals, feeders, or structures connected therewith, except by the fault of the officers in charge of the same." And also to insert the same after the word "therewith" in the thirteenth line, so that in a case such as has been mentioned, of a general flood, as the flood of 1865, or flood of 1864, and the floods that have happened to the people along the line of the canals previous to that, where the whole country was submerged, where, in no possible way in the power of man could it have been avoided, the State should not be liable. Or, if we make the State liable in consequence of any thing of this kind, it should be for some defect or leakage in the line of the canal, the breaking away of some aqueduct in consequence of insecure masonry, or the breaking of some thing through its not being properly built. Where it can be shown that the State, through the fault or negligence of its officers, has

occasioned any of this loss, in such cases the Legislature may give relief. But in case of an overwhelming flood or disaster which cannot be prevented by the people of the State in their sovereign capacity, the State should not be responsible or liable. I trust, therefore, that the committee will see fit, so far as this matter is concerned, to content themselves with this amendment I have specified to this portion of the section.

Mr. VERPLANCK—I know nothing of the individual case referred to by the gentleman from Wayne [Mr. Ketcham] or the gentleman from Onondaga [Mr. Alvord]. But there is a principle underlying a portion of the provisions proposed to be stricken out which should not be disregarded by this Convention. I am content that the first part of this article should remain as reported to the Convention, in accordance with the vote which has just been given upon the amendment of the gentleman from Jefferson [Mr. Bickford]. I am also satisfied with the next clause contained in the seventh and eighth lines, in reference to injuries from the navigation of the canal. But the matter stated in the ninth, tenth, twelfth and thirteenth lines, in my judgment, should be entirely stricken out. In the first place, it provides that the State shall not be liable for any damage or injuries sustained by any breakage or defect in any of the State canals, feeders, or structures connected therewith; and secondly, that the State shall not be liable for any damage or injury arising either on account of the construction or maintenance of any of the State canals, feeders or structures connected therewith. It is said that this should be retained because so many unjust claims have been made against the State, and so much money has been improperly and unjustly paid on claims for injuries of this character. It is not contended that just claims have not been made, and have not been paid. And if just claims can arise, it would be improper for this Convention to say that the State should not pay such claims, whether they are occasioned by a breaking of the canal banks, or by improper structures upon the canal. It is also claimed that when the canal was constructed, the property taken was paid for, and therefore the State should not pay for any consequent damages. But it will be recollected that if a railroad procures a franchise to build a road through a particular section of country, the law requires that it shall be built without unnecessary injury to the owners of the land through which the road runs. Can it be that, although the State has paid for land taken for a canal if the canal is not properly maintained, or if a break should occur in a place where no danger was apprehended to the adjoining farmers, and property is destroyed that the State should not compensate the injured parties? Again, if the State build an improper structure, and some person along the line of the canal is damaged on account of that structure, it is monstrous to say that the State should not remunerate the injured party. It is claimed by gentlemen that no damages shall be paid unless the difficulty can be traced to the agent of the State. This does not obviate the difficulty, because cases have occurred, and

cases will occur, where there are breaks in portions of the canal which appeared perfectly secure, and which had been secure for years. It may be that the structures upon the canal in the way of culverts, which so far as persons versed in the science are concerned, appear to have been correctly and properly made; and yet, when tested by flood, turn out to be defective. It is unfair to say, that in such a case a party injured shall not receive compensation. I put this upon the broad principle that the State, like an individual or like a corporation, should make compensation for injuries done. That is fair, equitable and just. I suppose there will be a division of the question. The clause refusing compensation for damages on account of breaks or improper structures, made by the State, should be stricken out. It is said by my friend from Onondaga [Mr. Alvord] that the State should not be liable in case of a great flood. Why not? If the flood would have done the injury if the canal had not been there, then I agree with the gentleman that the State would not be liable and should not pay the damages; but if the works of the State cause the flood to produce the injury, why should not the State pay? This is a plain, common sense proposition. It is a question of equity and good faith, and I trust that this Convention will not, because it is recommended by the Canal Committee, or because it is recommended by any individual of that committee, do such an act of injustice as to deprive persons living upon the line of the canals of a chance to obtain compensation for injury sustained in this way, solely because the canal has not been properly constructed, or is not properly maintained. If you do this injustice, you will enlist not only the opposition of persons living on the line of the canal and subject to such injuries, but you will enlist also the good sense of every individual in this State whose attention is called to this subject against a Constitution containing such an unjust provision.

Mr. KETCHAM—I understand that an amendment has just been adopted inserting the word "existing" before the words "State canals" wherever they occur in the section.

The CHAIRMAN—That amendment was adopted.

Mr. KETCHAM—Well, I will modify my amendment so as to commence with the word "nor," in the sixth line, and go down to and including the word "therewith," in the thirteenth line.

Mr. VERPLANCK—I would like to ask the gentleman from Wayne [Mr. Ketcham] whether he would not consent to have his amendment commence with the word "nor," in the eighth line, and end with the word "therewith," in the thirteenth line? If he will make that amendment, I have no doubt that this Convention will adopt it.

Mr. KETCHAM—I accept that modification.

The question was put on the motion of Mr. Ketcham, as modified, and was declared carried.

Mr. KINNEY—I consented to the amendment suggested by the gentleman from Clinton [Mr. Beckwith] rather hastily. The object of my amendment, as the committee already understand

it, is to exempt the Chenango canal from the provision of this section. All will understand that it would be very unjust to apply the provisions of this section to a canal now in process of construction.

The CHAIRMAN—Does the gentleman make any motion?

Mr. KINNEY—Yes; I move to reconsider the motion by which that amendment was put in, in order to modify it to meet the desired object.

The question was put upon Mr. Kinney's motion to reconsider, and was declared carried.

Mr. KINNEY—Now, in place of the words "existing State canals" (which I understand will include the Chenango canal, because it is an "existing State canal"), I propose to insert my original amendment, "completed before the first of January, 1867." That was my original proposition, and I accepted the suggestion of the gentleman rather inconsiderately.

Mr. BECKWITH—When I made that suggestion, I was not aware of the fact that the gentleman has stated. I will ask him if it will not now be necessary to insert that in other parts of the section?

Mr. KINNEY—Those other parts have been stricken out.

Mr. C. E. PARKER—I suggest that the gentleman so shape the amendment that it will include the feeders connecting with the canals.

Mr. ALVORD—I would like to have the amendment read.

The SECRETARY—It is to insert in the third line, after the word "canals," the words "completed on or before the first of January, 1867."

Mr. ALVORD—I would like to know whether that refers to the canals or the bridges?

The CHAIRMAN—That is for the committee to determine.

Mr. ALVORD—It strikes me that an amendment of that kind would apply to bridges over the uncompleted State canals. Let me suggest that the gentleman modify his amendment so as to say "completed or finished State canals."

Mr. KINNEY—That is what is meant.

Mr. ALVORD—Then I suggest that the word "completed" be inserted before the words "State canals."

Mr. MERRITT—I would like to hear read the amendment which we reconsidered.

The SECRETARY—It was to insert the word "existing" in line three and line seven and in line twelve, so that it would read in line three and in line twelve "existing State canals," and in line seven "existing canals of the State."

Mr. PROSSER—I hardly think the gentleman from Tioga [Mr. Kinney] means to insert the word "existing" in the seventh line.

Mr. KINNEY—I intended to insert afterward, the word "said" before "canal" in the seventh line.

The CHAIRMAN—The Chair will suggest to the gentleman from Erie [Mr. Prosser] that that is not the question now pending. The gentleman from Tioga [Mr. Kinney] has modified his amendment.

Mr. ALVORD—I desire to vote for what the gentleman wants, and therefore I really desire that he would put it in the right shape and say

"finished State canals," because as he puts it now, it is a question of doubt whether it means canals or bridges.

Mr. KINNEY—I accept the amendment suggested by the gentleman from Onondaga [Mr. Alvord].

The question was put upon the amendment offered by Mr. Kinney, as modified, and it was declared carried.

Mr. VERPLANCK—The committee having struck out from this section the ninth, tenth, eleventh and thirteenth lines, it is necessary that another amendment should be made, and I move to strike out, commencing at the word "the," in the sixteenth line, to and including the word "body," in the seventeenth line. "The immunity of the State shall not at any time be waived by the Legislature or by any public officer or body"—

Mr. ALVORD—Will the gentleman from Erie [Mr. Verplanck] permit me to suggest that if he desires to preserve the right, so far as parties are concerned, to trouble the State in regard to those claims, he had better circumscribe this rather than strike it all out, by adding at the end of that clause, the words "except as provided in this section."

Mr. VERPLANCK—I will accept that suggestion. I think the amendment in that form will answer. It will then read, "the immunity of the State shall not at any time be waived by the Legislature, or any public officer or body, except as provided in this section."

Mr. COOKE—I would like to inquire of the gentleman from Onondaga [Mr. Alvord] whether he understands the immunity spoken of in this section to have reference to canal damages. The immunity of the State, does it not extend to every possible claim that may be made against the State by a citizen? If so, I prefer to strike these words out entirely.

Mr. ALVORD—It strikes me that in this connection, and with this context, it can have reference only to this matter. That is why I desire to have it retained.

Mr. VERPLANCK—I propose to change it by substituting for the words suggested by the gentleman from Onondaga [Mr. Alvord] the words "except as above provided."

The question was put upon Mr. Verplanck's amendment, and it was declared carried.

Mr. FERRY—I move to insert after the word "bridge," in the third line, the words "for public use." It seems to me that without such a provision the State would not be able to construct a bridge for its own use. I can imagine that such a necessity might exist, and I am anxious to avoid the awkwardness, if not the absurdity, of having a provision in the Constitution that would prevent the State from serving itself. I presume that there is nothing intended that would prevent the people of the State, if they saw fit, from constructing a bridge for their own use.

Mr. ALVORD—I take it, that if the State has the governance of the canals, and requires a bridge or any thing of that kind, there would not be any difficulty in regard to it. There can be but a single effect of this provision, that is, that the State is not to be compelled to build roads, or to build city, village, or farm bridges. That is all

there is of it. The State has just as much right to build a bridge, if it is necessary for the management of the canals, as they have to build a lock; and I think there is no necessity for putting in any such exception.

Mr. FERRY—The language of the section is very rigid indeed. It provides that no money shall be appropriated, or paid for the construction of a bridge across the canal, and if literally construed it would embrace what we all desire it should not embrace; and it is in order to prevent any possible difficulty of this kind, that I think it is better to insert the words I have indicated, "for public use."

Mr. ALVORD—The highway is for the public use.

Mr. FERRY—That no money shall be paid out of the canal revenue except for public use—that is what I want.

Mr. ALVORD—The difficulty in that is, that the highway bridges that the farmers will ask, are not for public, but for private use. If the gentleman fears that this provision, as it stands, will interfere with the rights of the State, I suggest that he put in the words, "except for the purposes of the canals."

Mr. MERRITT—I would suggest that he say, "except for canal purposes."

Mr. FERRY—"Except for the purposes of the State," strikes me as better. I see that my amendment is open to the criticism of the gentleman from Onondaga [Mr. Alvord], and I will modify it so as to say, "except for the purposes of the State."

The question was put upon the amendment of Mr. Ferry, and it was declared carried.

Mr. VERPLANCK—I would like to ask the gentleman who has this provision in charge, in the absence of the chairman of the Committee on Canals, whether it is not necessary to amend the concluding section, which provides that claims for compensation must be made within three years. That should not apply to persons under disabilities, infants, lunatics, or idiots; and I think that it should be amended in that regard.

Mr. ALVORD—I believe that such persons, who own valuable properties, infants or lunatics, or idiots, are ordinarily under guardianship or commission, and if their property is valuable enough to be looked after, it generally is looked after by their representatives. There is no difficulty in that regard. The law at present, without any modification, is that any claim against the State, must, as a matter of necessity, be made within one year; but this gives three years for these cases, and it has never been suggested that there was any necessity for making these cases of inability an exception.

Mr. COOKE—My idea is that the whole clause is useless. It was necessary, while the provision was retained, declaring that the immunity of the State should not at any time be waived, to qualify that provision so as to save any claim for property taken by the State; but taking the section as it now stands, with the amendments already adopted, it seems to me that this clause means just nothing. In the section as it now is, there is no clause relating to property taken by the State. There is nothing now prohib-

ited except the building of bridges, the payment of damages happening in the navigation of canals, and the payment of extra allowances on contracts. Now, I would ask what this last clause relates to? With the section in its present form, I think the limitation is quite useless, and I move to strike it out.

Mr. ALVORD—The criticism of the gentleman from Ulster [Mr. Cooke] is correct from the point of view from which he looks at it. I propose to amend this now, because it becomes somewhat necessary to do so, by striking out all of it down to and including the word provided, in the twentieth line, and inserting in lieu thereof the words "no claims for damages shall be allowed under this section growing out of the maintenance of the canals or feeders connected therewith, shall be heard or allowed, except the same shall be made within three years after the claim shall arise, unless the party claimant shall be under legal disability; and in such case the claim shall be made within three years after the removal of such disability."

Mr. COOKE—But we have already prohibited the payment of any claims.

Mr. ALVORD—No, we have not.

Mr. COOKE—Yes, sir, for all the claims left in the section. We have struck out a number of things. There is the matter of building bridges for the first. For that, no claim is to be paid at all; the immunity of the State is not to be waived in respect to that matter. Then, damages arising from the navigation of the canals is the next thing we find in the section, and no such damages are to be paid under any circumstances, nor is the immunity of the State, in that respect, to be waived by any body. Then, extra allowances; we are not to pay any thing for them, nor has the Legislature any power to waive the immunity of the State with regard to them. Now, to provide, as it is here proposed to do, that no claims under this section shall be paid unless presented within three years, would, it seems to me, by implication, permit the very thing we have just before prohibited.

Mr. ALVORD—The gentleman is right.

Mr. MERRITT—I agree with the gentleman from Ulster [Mr. Cooke], that it ought not to be in this section; but there should be an independent section, embracing the idea of the gentleman from Onondaga [Mr. Alvord], or it should be added to some other section. There should be a limit to the time at which these claims should be presented.

Mr. ALVORD—I would ask the gentleman, whether he recollects—it seems to me that I have a faint recollection—that there is a somewhat similar provision to this in reference to the court of claims.

Mr. COOKE—The same statute of limitations applies as in other cases.

Mr. ALVORD—I think that, unless the Convention desire to change the time from six years to a shorter time, this may as well be stricken out.

The question was put upon the motion of Mr. Cooke, to strike out the last four lines of the section, and it was declared carried.

Mr. BICKFORD—I desire to offer the following

amendment: Insert after the words "sixty-seven" in line six, the words "but the Legislature may allow any town or towns or individuals to build bridges over the canals, and when it shall be equitable for the State to bear a part of the expense of building and maintaining such bridges the Legislature may appropriate money in such proportion as it may deem equitable for the State to pay." I consider that the vote on this amendment will bring to the test the question whether the members of this Convention are willing that the State should be equitable or not, whether they are willing that the State should do justice or not. This provides only for what is equitable and right, nothing more. The gentleman from Clinton [Mr. Beckwith] has contended that the towns already have authority to build bridges. This expressly recognizes their authority, or provides that the Legislature may confer such a right and then, in cases where it is equitable, it provides that the State should bear a part of the expense—as it is eminently right they should do where the bridge is required to be more costly than it would be otherwise. This provides that the Legislature may appropriate money for such a purpose, and I insist that this Constitution should not prohibit the State from doing what is fair and right. I therefore move this amendment that we may not have a Constitution which would forbid the State to do what is right and equitable.

Mr. KETCHAM—I hardly like the amendment, I do not like the language of it; but I would not object to it only for this reason. I want to ascertain as soon as possible whether we are going to take away all the powers of the Legislature. If we are, I think we had better abolish the Legislature altogether; otherwise I think we had better leave them some power.

Mr. WAKEMAN—If the question were put to me, whether I was in favor of the State doing equity in any case, I would say, certainly, by all means. I would like the State to be equitable in all things. But who is to judge. We are trying now to guard the Legislature against appropriating the public money for individual or private purposes and calling them public purposes. Now the gentleman from Jefferson [Mr. Bickford] says he is going to bring us to the test to find out whether we are willing that the State should be equitable. If that could be determined with unerring certainty, I should most certainly vote for his amendment; but I submit whether, by adopting it, we shall not be undoing all that we have already done upon the subject. What is it? We have adopted the report submitted by the committee, saying that in all cases where bridges have not been maintained by the State over the canals, prior to 1867, no money shall be appropriated by the State. Now these bridges have been in existence, in some cases, since 1825; and persons living remote from the canals have been taxed for them, and the property along the line of the canals has been increased by it; and I think we might say with propriety, "Maintain your bridges over the canals the same as we have done in Genesee, over the many streams in that county. We have to be taxed there without the immediate benefit of the taxation." This section prohibits the State from constructing

any new bridges over the canals, and requires towns and counties to build their own bridges. The gentleman from Jefferson says that in all cases where bridges are built if it shall be deemed equitable and wise, the Legislature shall not be prohibited from appropriating money. I ask the gentleman whether or not in the application of this provision, the Legislature would not be at liberty to say in the case of any bridge built hereafter, that it would be equitable for the State to build nearly the entire bridge; and in that case the individual or town might pay, five dollars towards the bridge while the State should pay all the rest. The point here is to prohibit the Legislature from appropriating the public money for building new bridges, or in other words for building bridges where they have not been built by the State. If you adopt the amendment of the gentleman from Jefferson [Mr. Bickford], you may find the Legislature in every case declaring that it is equitable for the State to bear three-fourths of the expense or perhaps the whole expense, except a mere nominal sum. I would much rather vote for an amendment requiring the counties and towns to build the bridges in their own localities over the streams or artificial canals along their entire line and throughout the State. I would not go to that extreme; but I would much rather vote for that, than for this amendment. If this should pass, the difficulty will be to ascertain what is equitable. Every town that wants to build a bridge, will come to the Legislature for aid, the very first move that they make. And whenever there is a scheme for building a bridge, after the adoption of this Constitution, if this provision, with the amendment of the gentleman from Jefferson [Mr. Bickford] is in it, the Legislature will have no difficulty in getting round it. I am opposed to the amendment, and shall vote against it for the reason I have stated.

Mr. MERRITT—I think that the latter part of the amendment relating to the maintenance of bridges has been virtually disposed of; but the part of the amendment conferring authority upon the localities where bridges are required may be very proper and necessary. I call for a division of the question, and I raise the point of order that the latter portion of the amendment, in relation to the State doing any thing toward building bridges, has been settled by the committee.

The CHAIRMAN—The Chair is inclined to think that the latter part of the amendment has not been passed upon, this being a proposition that the State shall build a portion of the bridges.

The question was stated on the first branch of the amendment.

Mr. E. A. BROWN—I understand that the amendment proposed by the gentleman from Jefferson [Mr. Bickford] meets a case that is actually existing and that has occurred heretofore. There are two and I do not know but three bridges over the canal, or over the waters of the Black river where there were formerly low bridges, comparatively cheap structures; but for the purpose of navigation it was necessary to take the bridges away and to construct much more expensive and permanent bridges—and, as has been said here before, higher bridges, with

draws upon them. The State built a portion of the bridges and the town has built another portion. If it be said that the State should not be called upon to build the whole bridge in such cases they should very properly be called upon to pay all the additional expense that is required, by reason of enlarging the bridge and putting in the draw.

Mr. BICKFORD—I wish to say one word with regard to what has been said of the immunity of the State. We may as well understand what the immunity of the State is. The State does not deny when it establishes its immunity that it ought to respond in damages, but it merely says that it is the policy of the State, that the State shall not be sued, but we adopt another policy, instead of allowing the State to be sued we allow parties to claim that the State has injured them, to go to the Legislature and to present their claims there. That is what is meant by the immunity of the State, that we shall not allow the State to be sued, but establish another tribunal. Now when it is said that the State shall not be just—shall not be equitable,—shall not do the thing that is right between itself and its citizens, it merely takes the position of a tyrant. It does a thing because it has the power—the physical force to do it, and not because it is right to do it. Here is a case where it is right that it should build a bridge—such a bridge as it will allow to be built. The towns might build a bridge very easily with one-half, one-fourth, or one-fifth part of the money that will be required to build such a bridge as the State will allow to be built. Certainly the State, if the bridge is built, ought to bear the expense of a certain portion of it. I trust the time is yet distant, when any body claiming to be a fair minded man will say that the State ought to assume an unjust and inequitable position.

Mr. MAGEE—I move to strike out the word "Legislature," and to insert the words "the superintendent of public works with the consent of the commissioners of the canal fund." I do not want the Legislature of our State to be harassed for half a century about these miserable bridges. Leave it to the superintendent of canals or commissioners of the canal fund. Then I move again to strike out the partnership between localities and the State. I want no partnership between the people along the line of the canals, and the State. I prefer that the State shall build the bridges itself. It will cost us more money if we go into partnership with regard to the bridges than to build them ourselves. If we build at all let the State build them, and let there be no partnership with interested parties.

The CHAIRMAN—The Chair will state that voting down the last part of the proposition, will be identical with the gentleman's last amendment.

Mr. E. BROOKS—I wish to make a single remark in regard to this matter. I do not believe in allowing the Legislature to contribute to the support of these bridges, or even putting them in the hands of the superintendent and the canal commissioners, or any class of State officers. I believe about as much in the beneficence of the govern-

ment as my friend from Jefferson [Mr. Bickford], but I do not think it is any part of this beneficence to construct a bridge over the public highways in which the localities have a direct and important interest, and which contribute very much to their advantage. Gentlemen seem to throw out of consideration, in discussing a question of this kind, that the very points where these bridges are usually required are the important points in the State, and those which have derived great advantages from the existence of the canals. When any of these bridges are built, they receive as much benefit from them as the State or the people at large. I believe in the doctrine of equivalents, as well as the doctrine of beneficence, and I think these towns secure a positive advantage when they obtain these bridges, even if they build them at their own expense. They are great highways or thoroughfares leading to some commercial or business center.

Mr. BICKFORD—I said nothing about beneficence in this connection. I only spoke of justice and equity.

Mr. E. BROOKS—My friend very often, poetically and in prose, discourses learnedly and interestingly upon the subject of the "beneficence of the government." Now, upon the question of justice, I think there is more injustice done the State in taxing it for improvements like these, than to the people, in imposing upon them the burden of building a bridge. As has been said by the gentleman before me [Mr. Magee], if the State contributes any portion of this expense, whatever that portion may be, which is deemed to be equitable, if my friend's amendment prevails, there will be an opportunity for those interested in the matter to put their hands very deeply into the treasury of this State. I hope, therefore, the amendment will not prevail.

Mr. SMITH—I do not rise for the purpose of discussing the question, but merely for the purpose of making a suggestion. If I understand the amendment correctly, it seems to me to make utter nonsense of this part of the section. It first prohibits the Legislature from appropriating any money out of the canal revenues for the purpose of building a bridge, and the amendment adds, "except when it is equitable," leaving the whole power to the Legislature. We do not want such a piece of nonsense as that in the Constitution.

Mr. HALE—I rise to a question of order—that the amendment of the gentleman from Jefferson [Mr. Bickford] is hardly susceptible of division. The first part of it, if adopted, does not in any way change the meaning of the section, as it is now. The section is that no money shall be appropriated or paid by the State to build a bridge. The first part of the amendment, taken alone, gives to counties and villages the privilege of building a bridge. That privilege is not taken away by the section. Nothing in the section prohibits localities from building bridges. It merely prohibits the bridges from being built by the State.

The CHAIRMAN—The Chair rules that the point of order is not well taken. It is legitimate to declare the rights and powers of villages to build bridges over the canals, with the assent of the Legislature, or, if the amendment of the gen-

tleman from Schuyler [Mr. Magee] is adopted, with the assent of the superintendent of public works or the commissioners of the canal fund.

The question was put on the adoption of the amendment offered by Mr. Magee, and it was declared lost.

The question was put on the first branch of the amendment offered by Mr. Bickford, and it was declared lost.

The question was put upon the second branch of the amendment offered by Mr. Bickford, and it was declared lost.

Mr. ALVORD moved to add to the section the following:

"No claim for damages growing out of the maintenance of the canals or feeders connected therewith shall be heard or allowed, except the same shall be made within three years after the claim shall arise, unless the party claimant shall be under legal disability, and in such case the claim shall be made within three years after the removal of such disability."

Mr. KETCHAM moved to strike out "three", and insert "six" in the amendment.

Mr. ALVORD—I would merely say that the law of the land to-day is one year instead of three.

Mr. KETCHAM—I am aware of that, and for that reason there has been a difficulty in collecting just and equitable claims, and acts have been passed by the Legislature authorizing the payment of just claims. I know that in very many cases an enabling act, if I may so call it, has been passed by the Legislature authorizing an examination by the appraisers, and an award, where they were satisfied an award was proper, upon a claim outlawed, in some cases, before the parties suffering even dreamed that an appropriation had been made. I have in mind now a case of this kind. Although the appropriation had been formally made, the parties knew nothing about it until after the expiration of the time limited by law for making their claim. I cannot see, for the life of me, why the time should be shorter in which a claim should be asserted against the State than against individuals. Six years is the statute of limitation for an action by one individual against another. I submit, there is no reason why it should be any shorter against the State than against an individual. The State makes appropriations, and oftentimes the parties know nothing about them after they are made; sometimes not until the expiration of the time which the statute allows for prosecuting the claim. The law of the land has been construed, I am aware, by the appraisers and by the canal board, to be one year after the completion of the work embraced in the contract where a contract is the means of using lands covered by an appropriation. For instance, an appropriation is really made to-day, and work is to be done on it; the work is let; the land is not touched, and the job is not done within the three years. The work upon the land in some places is not commenced until after the expiration of a year from the time the appropriation is actually made and the job let but not performed. To get rid of the apparent injustice of that, the construction of the law has been that they should deem the appropriation really

made, as in fact made, when the work was completed; and thus they have saved many parties from the necessity of going to the Legislature to get an enabling act, as I have termed it—an act providing that the appraisers might examine the case, and in proper cases make the award. Yet, in very many instances, not knowing that an appropriation had been made until after the expiration of the year they have been obliged to go to the Legislature to get acts passed permitting the canal appraisers to make the examination and award for the damage which they claimed to have sustained. It is for that reason that I move this change, that I do not see any reason at all why the State should avail itself of a shorter statute of limitations than we allow to individuals.

The question was put on the amendment of Mr. Ketcham, and it was declared lost.

The question recurred upon the amendment offered by Mr. Alvord.

Mr. WILLIAMS—I would inquire of the gentleman from Onondaga [Mr. Alvord] what necessity there is for the words “not prohibited in this section.”

Mr. ALVORD—The gentleman from Onondaga inserted that so as to show that we do not mean by the following words that a claim may be made in three years, which is prohibited under that section from being made; but mean that claims not prohibited by this section should be made in three years.

Mr. WILLIAMS—It occurred to me that it would be entirely fair to assume that when we prohibit them, these claims cannot be made at all. It seems to me it will be repeating what we have done before, and be an unnecessary waste of words; that the section would be as strong as it possibly could be with these words stricken out. I move to strike out those words.

Mr. ALVORD—I trust they will not be stricken out. It is one of the great troubles of our present Constitution that where there was a fair intendment, owing to some little letting down of the words of the Constitution, they have been construed to mean entirely different from what was intended by the parties who framed it, and by the people who ratified it. Now, here are only two simple words, showing clearly what is meant, so that there can be no claims offered which are prohibited in this section. It only requires those two words to make that certain. They certainly do not mislead any body. On the contrary, they show conclusively that there are claims outside of those which are thus prohibited. I trust, therefore, that as mere explanatory matter, so that there shall be no mistake, there will be no objection made to their remaining in the section.

Mr. HALE—It seems to me that the motion of the gentleman from Onondaga [Mr. Williams] should be agreed to—that the implication now is that the claims prohibited here may be made after three years. The provision is that no claims, not prohibited, shall be allowed after three years; and the implication is that others may be.

The question was put on the amendment offered by Mr. Williams, and it was declared carried.

Mr. MAGEE moved to strike out the word “three” and to insert “two.”

The question was put on the amendment offered by Mr. Magée, and it was declared carried on division, by a vote of 39 to 29.

The question recurred upon the amendment offered by Mr. Alvord, as amended, and being put, it was declared carried.

Mr. E. BROOKS—I move to add the following section:

“In all contracts for materials, or for work done, or to be executed upon canals of this State, no informal bid shall be rejected until the party or parties making the same shall have had notice of privilege to amend or correct the same, and no alteration of the plan or any specification shall be made before or after the execution of the contract, except with the consent of the commissioners of the canal fund, and of the superintendent of public works, or a majority of the same.”

My reason for offering this amendment is this. In the Constitution, as amended in 1854, there is this provision in the last clause:

“All contracts for work or materials on any canal shall be made with the person who shall offer to do or provide the same at the lowest price, with adequate security for their performance.”

The idea, undoubtedly, of the people who adopted this amendment to the Constitution, and of the Legislature who framed it and submitted it to the people was this: that by a provision of this kind, which in a large sense is legislative and not constitutional in its character, the reform desired of securing contracts at the lowest market rates would be accomplished; but, sir, the experience of the last few years has told us that this provision of the Constitution has been an utter failure, and a failure arising from a combination on the part of the canal contractors. For example, the usual advertisements are made for a certain amount of work to be done at the lowest possible rates. Then comes a combination between A, B, C and D, who understand each other perfectly, and who know all about this work, who, indeed, connive and contrive and combine together, and put in their bids separately; but, when they are opened, the lowest bid is of an informal character, and, as a matter of course, it is rejected. The next lowest bid is also purposely informal in its character, and this is rejected; and then comes the third or fourth party, to whom the contract is awarded. The effect is that the work is awarded upon the highest bid to him as the party claiming the contract, and all owing to this perfect understanding and combination between the respective parties. Now, in order that this may be avoided, if possible, the amendment which I have introduced provides that the party making the original bid shall have permission, or the privilege, of revising his contract; it must be sent back to him for amendment or revision. The effect of it may not be all that is desired, but it will make his intention of deceiving and cheating the State so palpable that almost any man will be ashamed of the trick. It is, at least, another effort to secure a remedy for the gross abuses growing out of this present contract system. I gave notice of this provision some days since, and I introduce it here in the hope that it will secure favor and effect some

practical reform. There is no doubt but what it is proper that something of this kind should be, in some way or other, incorporated in this article; but if the gentleman will consent, I would desire that this proposition be for the present delayed until more reflection can be had upon it, and until other members of the Canal Committee, particularly, who have been talking over this matter, with the idea of getting something in shape with reference to it, can come here and give us the benefit of their views in regard to it. I take it that it is pretty well settled that, so far as regards the present system of contracting for the repair of the canals, it stinks in the nostrils of the people, and it will just as soon as possible be done away with entirely, if not by constitutional, at least by legislative enactment, for the present. I trust, sir, that something will be done in reference to this question of contracting before we get through, which may commend itself to us and to the people of the State. I, for one, am entirely satisfied that there is but one way in which you can, by contract, keep the canals in this State in repair. There has not been much difficulty in the past with reference to contracts for public works, except in this wise: Contracts for public works have been generally made at ~~for~~ remunerative prices, though sometimes below those prices. But the difficulty has been that, in almost every instance, the Legislature has come in and relieved the contractors. The parties have come in and complained that they took the work under adverse circumstances, when labor and materials were low, and that by enhancement in all these things, and that by unexpected delays and hindrances in their business, they have suffered heavily, and will be sacrificed unless the Legislature grants them relief. This plea has almost always availed, and they have obtained relief in nearly every case.

Mr. MERRITT—I would suggest that the difficulty is obviated already in the section where it provides that no extra compensation will be allowed. I hope that this section will be adopted. We shall have time to look it over before we can act upon it in the Convention, and if necessary to amend or to strike it out altogether, we can do so then. It is the expression of the committee—

Mr. ALVORD—I would ask the gentleman [Mr. Merritt] if he desires to ask me a question? I have the floor.

Mr. MERRITT—I understood that the gentleman had yielded the floor.

Mr. ALVORD—I have not.

The CHAIRMAN—The gentleman from Onondaga has the floor.

Mr. ALVORD—As far as regards contracts for the repairs of the canals, under no circumstances can I consent, even by implication that there shall be placed in the Constitution the privilege or power of letting the repairs in the present form and manner. The existing system of contracting is simply a system on the part of the contractors of seeing how to get along with the least possible trouble, and to leave the State works, although perhaps to outward appearance in good condition, so crippled and dilapidated, that the State will have, if the system is continued, to take

up a ruined canal and built it entirely over. Now, my opinion is that outside of the superintendent system, by which the State takes care of the work itself, and keeps it in order by "days works," as other work is done, there is but one other way to do it, and that is to put the contractor in a position where he will be a *quasi*-partner of the people of the State. That can be done in this way: give him the privilege of making the contracts for a long period of time, and extending over a large amount of the canal, and predicate his reward for the work upon a percentage per ton per mile upon the property carried through the canal. In that way he will become interested in keeping the canal in first rate order, in regard to all its appointments of every kind and description, so that the largest possible volume of traffic that may come to the canals for transportation, will be transported satisfactorily over its line, because as the tons of property move with celerity and quickness through the canal aggregating larger and larger, so will aggregate to him his reward for keeping the canals in good condition. In no other way I say, except by resorting to the old fashioned way of keeping them in repair by the State itself, can we obtain a system that will suit the people, and be a benefit and an advantage to them; and it is for this reason that I desire that this amendment shall not, at least for the present be passed upon, and may be delayed so that we can look into the matter and see whether we cannot come to some conclusion whereby the object which we seek can be attained. I tell gentleman, and I tell it to them without a doubt in my mind in regard to its truth, that if the present system of keeping the canals in repair is persisted in, you may put all the guards around it that you please, and in less than five years from this time you will have the entire canals to build over again. Where is your Genesee Valley canal to-day? Why, sir; there are boats that have lain at Olean for over ten weeks unable to get away, although if the repair contractor had done his duty, there is no reason why the navigation should be interrupted at all. Again, a few days since during the interregnum I was at home, and saw there long lines of boats of three or four miles in length upon the Jordan level, the navigation greatly impeded, and property going through very slowly indeed. Why? Because there was not a police there; the contractor cared nothing about it. The Legislature at its last session abolished the office of superintendent, and there was no commissioner, no one to look after the interests of the canal at that point. Boatmen, employed, a great many of them, by the month, and expecting to be discharged when they get to New York, because there would not be time for them to go back to Buffalo for another load, desired to fritter the days and the weeks, so as to protract as much as possible the term of their employment; and if their boats get aground on the bank, they would swing them around, and refuse to go ahead, or to get out of the way and allow others to pass. If you had a superintendent to see that the obstructions to navigation were removed, of course this would be avoided. So if the work were done under the

contract system that I have suggested, where the greatest amount of tonnage would bring the greatest amount of reward to the contractor, it could be avoided. Another thing; in the spring of the year the contractor goes upon the line at any particular place—say, for instance, the line of the Jordan level. There the wall benches upon which rest the stone are within a few feet of the surface of the water, contracting the prism of the canal to about forty-two feet in width at the bottom. These wide boats coming through push against these banks and loosen the dirt. This dirt is cleaned out in the spring by the contractor, but after the water is let in, the boats have to plow along the sides of the bank, owing to the cause I have stated. This dirt is thus thrown into the bottom of the canal to the depth of five, six, or eight inches, and where the boats start from Buffalo with a draught of six feet, when they come down to this point, which in the spring was cleaned out to the depth of seven feet, but which is now, perhaps, only six feet and a half, or even only six feet four inches, the letting out of the locks at either end brings the boats on the bottom and impedes navigation. Now, under the present system, nobody is responsible for it. There is no superintendent and no commissioner who can interfere. It is entirely in the hands of the contractor, and he pays no attention to it whatever. Now, the result is, that under the present system, we are virtually losing a very large amount of the actual capacity of the canals for doing the business of the State. In the month of October of this year \$875,000 was received by the canals for tolls, a larger amount than has been received in any other month in the history of the canals; but if there had been navigation such as there should be, and such as the system which I suggest would have secured along the line of the canals, that \$875,000 would have been over \$1,000,000. It was only for the reason that the boats were compelled to move upon this level at the rate of three or four miles a day days in and days out, during the last fall, that the State did not get fully \$1,000,000 for tolls. I trust, therefore, that the gentleman from Richmond [Mr. E. Brooks] will consent not to press for the present this amendment, until he can have time to examine more closely into the matter, and see if some provision cannot be brought into shape so as to avoid the difficulties of the past, and to give us the advantages of the future.

Mr. E. BROOKS.—Mr. Chairman, this amendment has been upon my mind ever since this canal article has been under consideration, indeed, almost since the Convention convened in the early part of the summer. I am convinced that it ought to be adopted. I think the gentleman, so far as his remarks have gone this evening, has given good reasons why such an amendment should be adopted, and has convinced this committee of the pernicious effects of the present system of performing work upon the canals by contract. All that this amendment aims to do is to secure integrity, honesty and an intelligent administration of trust on the part of State officers and on the part of contractors. Sir, until some other amendment, better than this, and aiming at the same purpose, shall be introduced, I cannot

consent to withdraw the one now before the committee. I cannot conceive wherein it can do any harm, and I think it must be the conviction of every gentleman here present that it may secure a great good. I hope, therefore, it will receive the approval of the committee; and if, when it is reported to the Convention, any improvement can be made upon it, I shall be very glad to adopt some other gentleman's proposition instead of my own.

Mr. S. TOWNSEND.—The only objection that occurs to my mind is this: I should like to ask the gentleman from Onondaga [Mr. Alvord] if I understood him correctly, to say that a provision of this kind would render it necessary that constitutionally by implication, the repairs of the canals should be continued by contract? Does the gentleman go as far as that?

Mr. ALVORD.—I will answer the gentleman's question to this extent—that the great argument used in 1854 at the inauguration of this system of keeping the canals in repair by contract, was based upon an idea that the Constitution compelled them to, and that to be in compliance with the Constitution in regard to this question of repair it was necessary that they should step out of the old channel, and should have the work done in this way.

Mr. S. TOWNSEND.—That point would have some weight in my mind, in inducing me to oppose reluctantly, without further amendment, the provision which my colleague suggests; and I would also suggest that perhaps a provision of that kind would prevent the introduction of a new source of labor. I allude to the prison labor of the State. We have three thousand stalwart prisoners who do not support themselves, who do not support the police who guard them, who do not pay the rent of the excellent buildings that they occupy, but who, on the contrary (although it may be sought to be covered up in the returns) put the State to an actual expense of half a million of dollars a year, and this at a period when, as we know, labor is paid at extravagant rates throughout the State, and especially the mechanical labor in which some of these prisoners are engaged. Of course, the question is not very pertinent now, but I trust that when we take it up, some of the gentlemen present, and particularly my honorable friend in front of me [Mr. Gould] of the Committee on Prisons will be prepared to go into the explanation of that point; but as I read the report, these prisoners cost the people half a million of dollars annually. I suppose that sum not one-half the waste from the improper management of our prisoners. Now, I would like to learn from the gentleman from Onondaga [Mr. Alvord], who exhibits a familiarity with this subject of canals and their management, that certainly is not exceeded by any gentleman upon this floor. I would like to ask his opinion of the propriety of employing this prison labor to a certain degree upon the canals, taking the men who are near the expiration of their terms of service, men who have had credits on the prison books, and whose escape would scarcely be probable. I would like to learn how the gentleman would regard the employment of those men, say one-third of

the whole number, a thousand men, in performing such duties as the State itself might not care otherwise to undertake, but which it would gladly do by availing itself of the labor of these prisoners. This is not a new suggestion. On the first organization of the means for the construction of our canals the labor of the prisoners, of course to a much less extent than I now propose, was introduced upon the original excavations. When I had occasion some years ago in the Legislature to suggest this idea, somebody said "Oh, that was tried in 1817 or 1818, and found not practicable." But I looked a little farther into the matter, and I found that the circumstances under which the labor was then employed was calculated to facilitate the escape of the prisoners. The contractors to whom the original construction was given were required to take the services of a certain number of the prisoners at a given rate of compensation which was as much or more than they would have had to pay to good laborers. Of course, a gang of prisoners required more supervision than other laborers would require, and so the contractors thought it would be cheaper for them to employ outside labor, and consequently they became careless of the custody of the prisoners, and took no sufficient means of preventing their escape. Now, I hope that when we get to the prison article, the gentleman having charge of that article will be able to show that under the proposed system, with its many ameliorating features, the State will say to the prisoners in the article: "In stead of sending you abroad as formerly, with only five or ten dollars in your pocket, we will let you take your one hundred, or your two hundred, or your five hundred dollars with which you can go into the far West and become a respectable citizen"—I hope, I say, that he will be able to show that the employment of this kind of labor in the way I have suggested will be practicable, and that some proposition of that kind will be introduced here, so that the Legislature may make some provision by which this great element of prison labor may be made available and help to rescue our canals from the lamentable condition in which they now are, as described by the gentleman from Onondaga.

Mr. SMITH—If the developments that have been made in regard to the management of canals, or what purport to be developments, are correct, it is not surprising that the canal question should have suggested the idea of State prison labor to the gentleman who has just addressed the committee. [Laughter.] I rise, however, merely for the purpose of making a suggestion or two interrogatively, in order to see whether I understand this matter correctly, and if not, to elicit the requisite information to guide my vote upon the question. If I do understand it, there is at present no provision whatever in the canal article tending to regulate contracts for the repairs of the canals. We have seen by these developments to which I have referred, that there are gross frauds perpetrated, and that thousands upon thousands of dollars have been taken from the State fraudulently and improperly. Now, it seems to me that this amendment is conceived in the right spirit, and it certainly looks in the right

direction. If I understand the argument of the gentleman from Onondaga [Mr. Alvord], he condemns the whole contract system; yet there is no provision in this article to abrogate that system, or correct the evil that exists. Now, if that be so, why not adopt this provision? It is at least one step in the right direction; and when this matter shall come up in the Convention, if the gentleman from Onondaga shall have a better proposition to submit, doubtless the Convention will be ready to accept it. But let us at least show our willingness to move in the right direction upon this question, which so interests all the people of the State.

The question was put upon the amendment of Mr. E. Brooks, which was declared carried.

Mr. HALE—I renew my motion that the committee now rise and report the article to the Convention.

The question was put upon the motion of Mr. Hale, and it was declared carried.

Whereupon the Committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. WEED, from the Committee of the Whole, reported that the committee had had under consideration so much of the report of the Committee on Canals as relates to their care and management, had gone through therewith, and had directed their chairman to report that fact to the Convention, and to recommend its passage.

The PRESIDENT—The question is upon agreeing to the report.

Mr. BICKFORD—Upon agreeing to the report as it now stands?

The PRESIDENT—That is the question.

Mr. BICKFORD—I trust that will not be done at present. I move that the Convention do now adjourn.

Mr. WEED—I trust the gentleman will withdraw that motion for a moment, that I may move to print the report.

Mr. BICKFORD—I will do so.

Mr. WEED—I make that motion.

The question was put upon the motion of Mr. Weed, and it was declared carried.

Mr. ALVORD—I do not suppose it is intended to foreclose our going through with this in the usual order in the Convention.

Mr. BICKFORD—Oh, no.

Mr. ALVORD—I would ask general consent (without consulting all the other members of the committee who are not now present) that this be considered in Convention immediately after the finance question, which is set down for Tuesday. I make that motion.

The question was put on the motion of Mr. Alvord, and it was declared carried.

Mr. BICKFORD—I renew my motion that the Convention do now adjourn.

The question was put on the motion of Mr. Bickford, and it was declared carried.

So the Convention adjourned.

WEDNESDAY, November 20, 1867

The Convention met pursuant to adjournment. Prayer was offered by the Rev. J. L. REESE. The Journal of yesterday was read by the SECRETARY, and was approved.

Mr. BEALS presented a memorial of J. B. Steele and others, for a constitutional provision abolishing the corporation known as the Regents of the University.

Which was referred to the Committee of the Whole.

Mr. WAKEMAN presented a similar petition.

Which took a like reference.

Mr. OPDYKE—I ask leave to present the minority report from the Committee on Cities, and with the consent of the Convention, I will read it.

Mr. OPDYKE proceeded to read the report, as follows:

The undersigned members of the Committee on Cities, their Organization and Government, respectfully present as a minority report the following article and explanations—

ARTICLE —.

SEC. 1. The executive power of cities shall be vested in a mayor, who shall be elected by the electors of the city, and shall hold his office for one year. He shall take care that the laws and city ordinances are faithfully executed. He shall receive at stated times for his services a compensation to be established by law, and which shall be neither increased nor diminished during the period for which he shall be elected. He shall not receive, during that period, any other emolument from the city, nor shall he hold any other office.

§ 2. Any mayor may be removed by the Governor, but only after due notice and an opportunity of being heard in defense, and for cause to be assigned in the order of removal. In case the office of any mayor shall become vacant before the expiration of the term for which he was elected, the Governor shall fill the vacancy until the next annual charter election.

§ 3. Except in the cities of New York and Brooklyn, the legislative power shall be vested in a board of aldermen. Their number, the mode of their election and their term of service shall be prescribed by law. In New York and Brooklyn the legislative power shall be vested in a common council, composed of a board of aldermen and a board of assistant aldermen. The board of aldermen shall consist of eleven members, to be chosen by such of the electors of the city at large as shall have paid, individually, during the year preceding the election, a tax on property officially valued at not less than one thousand dollars. They shall be classified so that five aldermen shall go out of office at the end of one year and six at the end of two years, and at the end of their respective terms, under such classification, the term of office shall be two years. The board of assistant aldermen shall consist of twenty-one members, each representing a separate district. They shall be chosen annually by the electors of their respective districts.

§ 4. The common council in New York and Brooklyn, and the board of aldermen in other cities, shall possess such legislative powers as may be conferred upon them by general laws, but they shall have no executive powers.

§ 5. Every act, ordinance, resolution, or proceeding which shall have passed the two

boards of the common council of New York and Brooklyn, shall, before it shall take effect, be presented to the mayor for his approval. If he approve it he shall sign it; if not, he shall return it to the board in which it originated, with his objections, within ten days, or at the next stated meeting of the board thereafter. Such board, after the expiration of ten days from the time of such return, may proceed to reconsider such act, ordinance, resolution, or proceeding, and if, upon such reconsideration, two-thirds of all the members elected to each board of the common council of New York or Brooklyn, or to the board of aldermen of any other city, shall agree to pass the same, or if the mayor shall not return any such act, ordinance, resolution, or proceeding within the ten days above limited for that purpose, it shall take effect as if he had approved it.

§ 6. Boards of aldermen and assistant aldermen shall choose their own president; and they may appoint a clerk and such other officers as they shall find to be necessary.

§ 7. The Comptroller or chief financial officer of the cities of New York and Brooklyn respectively, shall be chosen by the same class of electors that choose the boards of aldermen in said cities. Their term of office shall be three years, and they shall appoint all subordinate officers in their departments. They may be removed in the same manner as a mayor may be removed by the Governor. In case the office of either shall become vacant before the expiration of the term for which he was elected, such vacancy shall be filled by the Governor until the next annual city election.

§ 8. The mayor shall nominate, and with the consent of the board of aldermen, appoint all other officers charged with the administration of departments; and such officers shall appoint all subordinate officers in their respective departments. All other executive officers shall be appointed by the mayor. Any officer appointed by the mayor may be removed by him at pleasure; and all officers charged with the administration of departments may at any time be removed by the mayor, with the consent of the board of aldermen.

§ 9. The mayor shall nominate, and with the consent of the board of aldermen, appoint justices of the peace, police justices, and all other justices of inferior courts not of record. Their term of office shall be four years. All vacancies shall be filled by the mayor, with the consent of the board of aldermen. Any such justice may be removed by such court as may be designated by law, but only after due notice and an opportunity of being heard in defense, and for causes to be assigned in the order of removal.

§ 10. The State, for the purposes of local government, shall be divided into towns, counties, cities and villages, as heretofore, and no other local divisions or districts shall be made except for sanitary and police purposes. The right to provide for the preservation of the public health, and to appoint and control the police force of the State, shall remain with the State Legislature; and in the exercise of these rights the Legislature may adopt whatever territorial divisions or local districts it may deem most conducive to the public good.

§ 11. The board of supervisors of the city of New York is abolished, and the duties of such board shall be performed by the board of alderman, subject to the supervisory and veto power of the mayor as conferred on that officer, in section five of this article, over the official acts of the common council.

§ 12. Every city shall determine by the concurrent assent of the mayor, the chief financial officer, and a majority of the board of aldermen, the amount to be raised by tax therein including police and sanitary expenses; but no money shall be raised, either by tax or loan, for any purpose not previously authorized by law; nor shall the credit, money or property of cities in any manner be given or loaned to or in aid of any individual, association, or incorporation.

§ 13. Cities shall hold only such real estate as may be necessary for administering their respective governments, for the public parks, and for other purposes of embellishment. But all markets held by private owners shall be subject to regulation by city ordinances, and all wharves piers and slips shall be held subject to such regulation as the laws of the State may prescribe, and to the ordinances of the city when not inconsistent with the laws of the State.

§ 14. Nothing in this article contained shall affect the power of the Legislature in matters relating to the port of New York, or to the general interests of commerce; nor shall it affect the title of the State in lands under water within the jurisdiction or boundaries of any city.

§ 15. All city elections shall be held on the second Tuesday of April, and the official year shall begin on the first day of May.

§ 16. The Governor, upon the adoption of this Constitution, or as soon thereafter as practicable, shall appoint three commissioners, whose duty it shall be to reduce into a systematic code, the laws of this State relating to the government of cities, with such alterations and amendments thereto as they shall deem expedient, and in harmony with the provisions of this article. They shall report their proceedings to the Legislature for its action thereon.

§ 17. The Legislature, at its first session after the adoption of this Constitution, shall give effect to this article by the enactment of a general law, in harmony with its provisions, for the organization and government of cities. This general law may, from time to time, be altered or amended, but no special act shall be passed.

§ 18. This article and the laws passed in pursuance of it, shall take effect on and after the second Tuesday in April, 1869; and all existing laws inconsistent with their provisions, shall become inoperative.

EXPLANATIONS.

The article here submitted coincides, in many of its leading provisions, with the article reported by the majority of the committee. Like that, its chief purpose is to confer on cities enlarged powers of local government; but it embraces important limitations and safeguards that are not to be found in the majority report.

Unless our theory of government is grounded in error, there can be no doubt of the propriety

of placing local interests under the control of local authorities. That theory teaches that all communities are capable of self-government, and that, under the guidance of personal interest and superior knowledge, they will act in relation to local questions affecting themselves with more intelligence and vigilance than can be expected from those who do not possess such interest and knowledge. Our complex system of government is founded on this theory. Its marked features of decentralization are specially designed to secure to States, and to political divisions of States, the right of absolute control over their own local interests. Thus the Constitution of the United States limits the sphere of the general government to matters affecting national interests; and, while it takes from the separate States all authority within that sphere, it leaves to them supreme political power within their own respective boundaries. The Constitutions of the several States are framed on the same theory, though they adhere less strictly than the federal Constitution to the principle of decentralization; for while they recognize counties, towns, cities and villages as political divisions of the State, intended for purposes of local self-government, they leave to the State Legislatures almost unlimited powers of control over all local interests. In our own State these powers are exercised to an alarming extent. Each succeeding year they produce a larger and larger progeny of special enactments relating to the interests of localities, until we find our session laws of the present year filling upward of two thousand octavo pages. Reason and experience teach us that most of these special laws would be more wisely enacted by local authorities, chosen by the electors of the political districts they respectively affect.

For these reasons it is believed that the rights of self-government, now vested in cities, may be safely and usefully enlarged. On this point there was little diversity of opinion in the committee; but the members differed widely in regard to the extent to which it would be safe to ordain this policy in the organic law. The majority propose to ordain it in all its plenitude, by vesting in cities the absolute right of self-government. The undersigned concur in the policy, but propose limitations and safeguards without which they believe its adoption would be fraught with imminent peril, especially to the city of New York.

The chief points of difference between the article they submit, and that of the majority of the committee, are these:

1. The majority vest in mayors absolute executive power, and make their term of office three years. The undersigned make their term of office one year, and limit their executive power by requiring the consent of the board of alderman in the appointment and removal of heads of departments. The majority clothe them with almost despotic power, and permit them to wield it for three years. If it be necessary to efficient administration to confer on mayors such unusual power, why put them beyond the reach of public opinion for so long a term? It is contrary to our practice hitherto, and cannot be free from danger. A bad man, thus armed for three years with unlim-

ited executive power in the commercial metropolis, might inflict irreparable injury on the rights and interests, not merely of the city, but of the whole State. Why not make his term of office one year, and thus hold him in wholesome fear of the people? The undersigned suggest this limitation; and in view of other provisions recommended by them, which will be noticed presently, they have deemed it best to make the power of the mayor less absolute than the majority propose.

2. The article of the majority confers on cities absolute powers of self-government, and prohibits the Legislature of the State from all interference therewith, except through general laws designed to carry out and enforce this transfer of power from the State to municipalities; and it forbids the passage of all laws applicable to what are known as metropolitan districts. The undersigned would make this transfer of power, and these restrictions on the Legislature, less sweeping. They propose to leave with the State government its present unrestrained prerogative over the police force, and over the sanitary and commercial interests of the people. They believe this to be best for all the cities of the State; and, as relates to the city of New York and its surroundings, they feel that its safety absolutely demands the retention of these powers by the State. The approach to the metropolis of epidemics and contagious diseases cannot be met successfully by a board of health unless its hygienic authority be extended to its environs and embraces a large area like that of the present metropolitan sanitary district. Nor can the police force of the metropolis perform its functions of preserving order and arresting offenders with entire success unless its authority and its force extend to the surroundings of the city. But the undersigned deem it still more essential to the interests of the city of New York that this force should be governed by the State, and not by the local authorities. When under the control of the latter, experience has shown that it is liable to be diverted from its true office, and to be made an instrument in the hands of designing men for the promotion of personal or partisan interests. With the power of appointing and removing this force vested solely in the mayor, as the majority propose, it would be likely to soon degenerate into a personal and political body-guard of that officer. Under State control, it has not been found liable to this subversion of its true functions. From the time the State first assumed that duty until now, the police force has been true to the interests of the city and creditable to the State. It is a proper adjunct to the criminal jurisprudence of the State, and a valuable aid to its military forces in quelling domestic disorder. For these reasons the undersigned regard this proposition of the majority as alike impolitic and dangerous. They believe its adoption would subject the city of New York to the danger of riot and disorder at every period of great political excitement, and perhaps at every recurring election.

Commerce is the paramount interest of this State. Its chief mart or centre is at the metropolis, whence its ramifications extend not only to every portion of this State, but to every portion of

the United States. All its parts are connected by a chain of inter-dependence. Consequently, any legislation of the city of New York affecting commerce in that city, would affect it throughout the State and the Union. For this reason alone the State should reserve to itself the power of controlling all legislation affecting the commercial interests of its citizens.

3. The majority of the committee, after providing for the transfer of all power appertaining to the government of cities from the State to the cities themselves, vests that power in the whole body of their respective electors. The undersigned propose to exclude the cities of New York and Brooklyn from this provision. They provide, that the boards of aldermen and the chief financial officers of these two cities, shall be chosen by such of the electors thereof as shall have paid, individually, during the year preceding the election, a tax on property officially valued at not less than one thousand dollars.

It will be seen that the difference here between the two articles is radical and vital. That of the majority place the government of New York and Brooklyn, as it does the government of all other cities of the State, wholly in charge of officials chosen by their entire voting population; that of the undersigned places a part of the governmental power of these two cities in charge of officials chosen by tax-paying voters. Under the plan they submit, no important measure can be adopted without the assent of both classes of officials. The sanction of the boards of aldermen, chosen by tax payers, will be necessary to the legal efficacy of any legislative act and every important executive appointment, while the finances will be in charge of officers chosen by the same class of electors. The mayor and the boards of assistant aldermen, representing the whole body of electors, will possess like power of restraining the action of the boards of aldermen. The result will be an equipoise of power between the officials representing the two classes of electors, which will enable either class of officials to arrest all improper acts or measures projected by the other. If this system of reciprocal checks should result in occasional inaction, it could only be for short periods, as the people would promptly apply the corrective by dismissing from office those in fault. In the mean time no unwise or corrupt measure could be consummated.

It will be urged that a property qualification for voters is contrary to public sentiment; that property confers no political knowledge, and that the requirement of such a qualification is unjust to those who do not happen to possess it. The undersigned are not advocates of this restriction of the franchise where its exercise relates to matters purely political. In all such cases they believe it to be as ungrounded in reason as it is unjust in principle. But municipal governments do not properly belong to this class, because their chief duty consists in the supervision and preservation of property. They have no political functions that extend beyond their own limits, nor is it proposed to give them any authority beyond what relates to the local interests of their own residents. The qualifications required of their magistracy are integrity of character and business capacity. No

political knowledge other than that which relates to the social wants and interests of their own people is needed. A magistracy for the performance of such duties will be best chosen by those who have proved, by their acquisition and preservation of property, that they themselves, in some degree, possess the requisite qualifications for administering the municipal government.

But there are special reasons for applying this limitation of the elective franchise in the government of the city of New York. Upwards of three-fifths of her voters are foreign born. Many of these are men of intelligence and integrity, well qualified to share in the administration of government. But a much larger number are without such qualifications. Many of them, when they land on our shores, have no practical knowledge of public affairs, having been reared under governments which excluded them from the right of suffrage and from all other participation in the functions of government; and many of this class are too idle and thriftless to learn their duty as citizens, or to put forth the requisite efforts to elevate their own social condition. These, added to similar classes of the native born, which always abound in large cities, constitute such a preponderance of this element in the voting population of New York, that it would seem to be suicidal to commit the important interests of that city to their unrestrained control. No person of intelligence, who has carefully observed the workings of the local government of the metropolis, under the present extension of the elective franchise, can doubt that the future welfare of that city would be put in great peril by placing all its local interests under the absolute control of officials chosen by the whole body of its electors. Inefficiency, lavish expenditure, corruption, and diminished security of life and prosperity, it is to be feared, would be the unavoidable results. It will be urged, perhaps, that those without property are injured in the same degree as tax payers by bad government, inasmuch as they are compelled to share in all its evil consequences, including the payment of excessive taxes, of which they indirectly contribute their share. This is unquestionably true, but the misfortune is that many of them are either ignorant of the fact or too heedless of the consequences to unite in efforts to improve the character of the city government. Many of this class are incapable of governing themselves, or of providing for their individual welfare. How improper, therefore, to place the welfare of the city in their keeping.

Unless the gift of self government to that city be qualified by limitations and safeguards of the character here indicated, the undersigned will feel constrained to oppose the proposition. They feel that the change, as proposed by the majority of the committee, instead of giving to the metropolis a better government, would be liable to so deteriorate its character as to render it intolerable. Anomalous and expensive as is the present disjointed government of that city, consisting in part of local authorities and in part of numerous State commissions, they believe it to be much better and safer than the plan proposed by the majority of the committee. It must be conceded that these State commissions constitute

the better part of that government. There is scarce one of them all that is not administered with ability and fidelity to the public interests. The management of the Central Park, by a commission emanating from the State, receives general commendation. The board is justly regarded as a model in administrative ability and fidelity. The other State commissions, consisting of the boards of police, tax, health, Croton aqueduct and fire commissioners, are entitled to similar commendation. Their respective duties are perhaps more difficult of performance, and more liable to collision with private interests and opinions, and, hence, more likely to elicit criticism; but the candid of all parties must admit that each of them is administered with fidelity and good judgment. Any one familiar with the administrative departments which some of them superseded, must concede that the change has been salutary.

For these reasons the undersigned consider it impolitic to abolish the State commissions, and to transfer to the local authorities the powers now vested in them, unless accompanied by the change they propose in the mode of choosing the latter. With that change, and under the other provisions of the articles they submit, they would regard this transfer of power as sound in policy, and in all respects judicious. They believe it to be the best means of securing good government to the metropolis. It would give it a compact, symmetrical government, with the executive power concentrated in a single head, which would produce a unity of purpose and action that cannot be hoped for under the present system of independent departments emanating from two distinct sources of power. The mode in which it is proposed to choose its magistracy would insure the representation of all classes and interests, and it is believed it could not fail to secure much higher official capacity and fidelity than can be obtained by the present mode. And, finally, it will give to that city the right of control over its own local interests—a right which should be conceded to every political division of the State and nation, if we would adhere to the true principle of self-government; for there can be no doubt that all political communities, whether large or small, will manage their own immediate affairs with better knowledge and more vigilance than can be hoped for when left to the management of others.

Signed, GEORGE OPDYKE,
S. D. HAND,
S. W. FULLERTON.

Mr. OPDYKE—There are two other members of the committee who we hoped would join in the report.

Mr. SMITH offered the following resolution,

Resolved, That the committees whose reports have not yet been made to the Convention be instructed to report on or before the 27th inst.

Which was laid upon the table under the rule.

Mr. M. I. TOWNSEND offered the following resolution:

Resolved, That when the Convention adjourns at two o'clock this day, the adjournment shall be until four o'clock in the afternoon.

Mr. E. BROOKS—The Committee on Rules

made a report last night. It was a unanimous report. We had well considered this whole question, and it was adopted by the Convention; that is, to hold sessions from ten in the morning until two in the afternoon, and from seven in the evening until such hour as the Convention thought proper to adjourn. It seems to me that in the progress of business, as well as consulting the convenience of a great majority of this Convention, those hours are much better than the hours proposed by the gentleman from Rensselaer [Mr. M. I. Townsend]. The remark he made last night with reference to being idle for five hours of the day, it seems to me, is not applicable to any member who attends properly to the discharge of his duties in the Convention, because I suppose it takes some time to become informed with regard to the reports on our files, and with regard to the business of this body, and no member need be idle for a single moment, even if we adjourn from two o'clock until seven in the evening. If he will make himself properly acquainted with the business coming before the body. I hope the rule adopted only last evening will not be changed.

Mr. M. I. TOWNSEND—With the exception of the report made this morning, the reports of the committees presented for the consideration of this body have been here ever since our former session, and I presume they have been all examined before this meeting of the Convention, and therefore I do not admit that the five hours from two o'clock to seven are at all necessary for the examination of the reports to be passed upon, or to enable members to discharge their duties fully in this Convention. I should not have offered this resolution this morning, but for the suggestion on the part of many members of the Convention last night, that if a count had been called it would have appeared that a majority of the Convention were now desirous of employing at least three hours between two o'clock and seven in the discharge of duties in the Convention. I do not wish to occupy time. Whatever is the wish of the Convention I shall assent to it, but I proposed this resolution for the purpose of seeing whether it is not a fact that the majority of the Convention concur with me in the belief that we shall best occupy our time between four o'clock and seven in the active duties of the Convention here.

The question was put upon the resolution of Mr. M. I. Townsend, and it was declared lost.

The Convention again resolved itself into Committee of the Whole on the report of the Committee on the Powers and Duties of the Legislature, Mr. ANDREWS, of Oneondaga, in the chair.

The CHAIRMAN announced the pending question to be upon section 23 of the report.

There being no amendment offered thereto, the SECRETARY proceeded to read section 24.

Mr. WALES—That section has been passed upon by the committee.

The SECRETARY proceeded to read section 25.

Mr. HALE—I think that section was passed over to await the action of the Convention upon the report of the Judiciary Committee. That

section and the ninth. That was done by a vote of the committee.

The CHAIRMAN—There being no objection, those sections will be deferred. Sections 9, 10 and 11 were postponed for the consideration of the reports of the Committees on Finance and on Charities.

Mr. RATHBUN—I am not aware what those provisions were passed for, but I think it was because it was supposed that they were properly to be considered together with the report of the Committee on Finances. This section—section 25—is a section of the Constitution of 1846, just as it was there; and the report of the Committee on Finances having been disposed of, I apprehend there is no reason why that should not be taken up and acted upon. I submit that there seems to be no good reasons why we should not act upon it now, there being nothing new in it—nothing beyond what is in the Constitution of 1846.

Mr. HALE—If I recollect right there is a provision on this subject in the report of the Judiciary Committee, and it was thought it would be more appropriately considered there than here. I do not remember the terms of the provision. I do not think it differs much from this, but the reason it was passed over before was, that it would be more appropriate to have the clause providing for judicial business, considered in connection with the report upon that subject.

Mr. RATHBUN—It seems to me that the Committee on Revision will put it where it belongs. That is all there is of it, that the Committee on Revision will locate it in the article in which it should be placed.

Mr. FERRY—It seems to me that we cannot very profitably consider this subject until we have the report of the Judiciary Committee. I did not hear very well what the objection was to postponing this, but to my mind it would be better to postpone it until that time.

The CHAIRMAN—The only indication that the Chair finds is upon the margin of this section, in which it is stated that this section was "passed over by consent."

Mr. HALE moved that the consideration of the section be postponed until the consideration of the report on the Judiciary Committee.

Mr. ALVORD—That is not possible for the Committee of the Whole to do. The only way is to pass it over now, and when we get into Convention the gentleman from Essex [Mr. Hale] can make his motion.

Mr. HALE—I do not move that it be referred to any committee, but that we pass it over until the action upon the report of the committee. We have power to do that.

The question was put upon the motion to postpone, and it was declared carried.

Mr. HALE—I make the same motion with regard to section 26.

Mr. S. TOWNSEND—I should like to have some reason assigned for that motion. It seems to me that this is an appropriate time, when providing for the duties of the Legislature, to provide some means of making their duties effective. This relates to the speedy publication of the laws of the State. If gentlemen will recur to their

papers they will find that the only statutes which have been published of those passed by the Legislature last winter are those running up to about number four hundred, while we know that about a thousand statutes were passed. When we were in session before, the book itself, the statute laws which were only to be used by an exclusive class, were not published. I learn from the gentleman from Erie [Mr. Verplanck] that that book is now out. I consider this as one of the most important points with reference to legislative duties that we can take into our consideration. It is perfectly absurd to allow the Legislature to go on and pass laws—a hundred, two hundred, or a thousand of them—and not give any publicity to them. There is a resolution of mine somewhere upon the table that requires that the laws shall be published as they are passed from time to time, and not wait three months or three days, but as they are passed and signed by the Governor, that they shall be published in some economical form, as in a weekly State paper, a weekly State gazette, copies of which shall be transmitted by authority of the State or Legislature to each of the school-districts of the State.

Mr. FERRY—My position is this: the section itself, I apprehend, nobody will object to; but it is proposed in our plan of a judicial system that has been introduced here, and I simply suggest that it go over until we consider that.

Mr. S. TOWNSEND—I see no reason why we should not consider it now. If we keep considering matters over and over we shall have an accumulation of matters before us.

Mr. HALE—Will the gentleman give way for a suggestion? I would suggest to the gentleman that this provides not only for the speedy publication of the statute laws, but of judicial decisions—for reporting judicial decisions. There is a specific provision for the two combined in each of these plans.

Mr. S. TOWNSEND—Then it will be better to ask for a division of the question.

Mr. HALE—That may be done, but I do not think there will be any objection at all to a provision like this when considered in the judiciary report.

Mr. S. TOWNSEND—I am entirely satisfied to yield to the decision of the majority of the committee, but I want the matter secured. I do not want this absurdity—I might almost say, this enormity—of the Legislature passing laws year after year, and the body of the people having no means of knowing what laws they pass. The theory is—and two-thirds of the members of this Convention, I think, are lawyers, and they should understand it—the theory is that every citizen must know the laws. How are the citizens to know the laws? Here it is the 20th of November, and of a thousand statutes passed last winter only four hundred of them are yet known in the State at large. I say that is a grievance.

Mr. FERRY—Permit me to state that this provision is in our present Constitution.

Mr. S. TOWNSEND—It has not been carried out. Let us enforce it. There are some admirable provisions in the present Constitution, which, by means of combinations, or "rings," as they are now known, are prevented from being carried

out. The State has employed men who have been engaged for twenty years upon codifying the laws, and they have been drawing their salaries from the treasury very faithfully, I have no doubt, for years. In the proposition which I made the other day, I named a definite time—the year 1870—for the completion of the work. Of course I shall have to ask, after this delay, the privilege of changing the date to 1871. If the committee think proper to pass this matter over, I shall yield; but I prefer that the section shall be acted upon now, and that there may be a division of the question, if this question of the judicial decisions is a legal matter or is desired to be acted upon separately? I have no objection to that, but the Legislature ought to provide for a speedy publication of their laws; and I consider that one of the most important and necessary and useful measures that we can act upon, and act upon at once.

Mr. RUMSEY—This provision is one that is in the old Constitution. If we adopt it now, when it comes up before the Judiciary Committee, they will pass it over and consider it as having been adopted, but it will finally be put in its proper place in the Constitution. I see no reason why we should postpone action upon it; we may as well pass it here as anywhere. It is hardly desirable that we should change the provisions of the old Constitution when they will answer our purpose.

The question was put upon the motion to postpone the consideration of the section, and it was declared lost.

Mr. S. TOWNSEND offered the following amendment as a substitute for section 26:

SEC. 26. The Legislature shall provide for furnishing for public inspection every district school library in the State with a copy of those issues of a State paper, to be published once a week, as shall contain the laws of the State as they shall be from time to time enacted, and such notices as are required to be published therein; and also for the publication, within sixty days after their adjournment, of all laws passed at each session; and also of any judicial decisions they may deem expedient. The Legislature shall also provide that, on or before the first day of January, 1871, there shall be prepared and published a revised code of the statute laws of this State, then in force.

Mr. E. BROOKS—It seems to me that the objection to that provision is—and I suggest it to my colleague [Mr. S. Townsend]—the enormous number of copies that would be required. There are between eleven and twelve thousand school districts in the State, and to furnish that number of districts with all these laws would be almost impossible; or if it should be possible, I am afraid that they would fall into the hands of those who would hardly appreciate them. The laws of the State should be published with a great deal more promptitude than at present is the case. In the country papers of November, 1867, they are very far from reaching the laws passed as late as March and April, 1867. The consequence is, that one Legislature meets before the laws of the previous Legislature are published. I think if some provision could be inserted whereby there should be

a promptness in the publication of the laws, the evil suggested could be in a great measure remedied. But I do not believe it is practicable to require so many copies to be circulated in the manner proposed; and beside, it would be very expensive to the State.

Mr. S. TOWNSEND—I do not yield to the suggestion of my respected colleague [Mr. E. Brooks]. I think the expense of twelve or fifteen thousand copies of a weekly paper would be nothing; although, of course the gentleman speaks with a knowledge of the subject, which I do not possess. Some of the New York daily papers, which contain a large amount of matter far more complicated than the simple laws of the State, publish a hundred thousand copies. I think there is no weight in the objection with reference to the number of copies required. I do not know what it would probably cost, but I suppose not more than \$15,000 a year. What is \$15,000 upon a question of this kind, when we secure the knowledge of the laws required to be respected? How can the laws be respected when they are not known? A man in former days was said to be a tyrant because he inscribed his laws so high that nobody could read them. How much better are we, if we write laws and do not publish them? If it costs \$50,000 a year, what is that, when we are taxed \$13,000,000 a year? What are \$15,000 or \$50,000, for the purpose of securing the knowledge to the people, and their familiarity with the laws by which they are governed? The whole theory of our government is that the citizen shall understand the laws, or at any rate have a voice in the framing of the laws. If the information is diffused among all classes, they will be able to respond to their duties better, and they will have more respect for the laws, and they will be better enforced. I do not believe any thing is more likely to be advantageous in the future legislation of this State than to have a knowledge of what the elected candidates to the Legislature are doing, brought home to their constituents, brought within half a mile or a mile of every man's residence. The school librarian is generally paid a salary, and he would be glad to attend to it, because there would be very often more than the mere naked laws published. I hope the suggestion will receive the support of the committee. I am not tenacious as to details. If any member of the committee can suggest improvements, I shall be very glad.

Mr. VERPLANCK—I am very sorry to differ from my old friend from Queens [Mr. S. Townsend] who has had so much experience in legislation and in constitutional conventions. When the Legislature is in session its proceedings are published at length from day to day, in the Albany papers; and these papers have subscribers in probably every town in the State. If any thing regarding any locality is under discussion, and a law is passed, persons in that locality are very apt to know something about it. More than this—when a local law is passed, the local papers call attention to it, and if any parties are interested in the law, they can always obtain a copy of it by sending to the office of the Secretary of State. It is said, with some truth, that these laws are not published as soon as they should be pub-

lished after the adjournment of the Legislature; but if they were published earlier, what would be the effect? They are purchased by lawyers in the various counties of the State, and they merely cut the leaves in half a dozen places to read some particular acts in which they happen to have some interest. I venture to say that if these laws were sent to the various school-districts of the State, as suggested by my friend from Queens [Mr. S. Townsend], almost the whole body of them would never be examined or read. They would lie there, mere useless lumber in the office of the clerk of the school-district, never referred to or used. There is no particular difficulty in having the laws distributed promptly through the State; and to have them sent to every school-district of the State, as required by the amendment, seems to me to be very unnecessary. The article under consideration, as it stood in the Constitution of 1846, is the proper mode of reaching this matter, and the Legislature should require a more prompt publication. After the discussion we have had upon this subject, the Legislature will see that the laws are published promptly. This debate is all that will be necessary to secure that end, and I therefore hope that the section as reported by the committee will be adopted.

The question was put upon the amendment offered by Mr. S. Townsend, and it was declared lost.

The SECRETARY proceeded to read section 28.

Mr. RUMSEY—If I recollect right, when the section was up last, the question was upon inserting in this section the provision prohibiting the Legislature from releasing the right of the State to lands acquired by escheat or forfeiture by reason of alienage, and that was not adopted. It was offered as an amendment by some one and we adjourned with that under discussion. If I recollect right the question is now upon this proposition.

Mr. VERPLANCK—I participated in the debate on the subject of escheats, and I am very sure that the subject was disposed of at the time.

Mr. ALVORD—I had the honor of moving that amendment, and that amendment was adopted by the committee—the very amendment in regard to escheats. Any objection was cured by the last provision, which was imperative upon the Legislature to pass general laws upon that subject.

Mr. BICKFORD—I know that that section was disposed of, when we had the words in relation to city railroads under consideration in the Committee of the Whole.

Mr. ALVORD—If the Chair or the Convention will refer to the very title of this article as printed they will find that amendments generally were in order, showing that we had gone through with the whole article. The question before the committee, if any, then is upon general amendments.

The CHAIRMAN—The Chair will follow the suggestion, and regard amendments generally as being now in order.

Mr. PRINDLE—I move to amend the twenty-third section, by adding in line sixteen, after the word "operated," the words "when the same

shall be wholly operated within any city or incorporated village." The section, I suppose, was intended to extend only to railroads where they are wholly or principally constructed and operated within cities and incorporated villages; but as the section stands it embraces all railroads, and will compel a railroad company constructing a road from one section of a county to another to purchase the franchise at auction from every incorporated village through which it shall pass. I am not certain but the amendment ought to apply to the whole section, but it certainly ought to apply here.

Mr. VERPLANCK—It is entirely unnecessary. The section provides that no railroad shall hereafter be constructed or operated within any city or incorporated village of the State until the consent of the local authorities of such village or city shall be first obtained. It is confined to railroads within cities and incorporated villages.

Mr. PRINDLE—Suppose a railroad runs from one section of a county to another, and goes through an incorporated city or village. Then it is constructed or operated within the city or incorporated village.

Mr. VERPLANCK—It is not a railroad within a village.

Mr. PRINDLE—It is operated within it and constructed within it. The amendment I propose is to obviate this difficulty.

Mr. VERPLANCK—The effect of that amendment will be simply that any person proposing to build a railroad in a city or village, may go to some point a little beyond it, and thus avoid selling the franchise at auction.

Mr. PRINDLE—I have no objection to putting in the words "principally," or "the larger portion of it;" but the section certainly requires some amendment.

Mr. RUMSEY—There was great difficulty in framing this to get at what we intended to do. The object was to prevent the Legislature from granting the city and village railroads in the manner they had done heretofore. If we stated that it must be wholly within the city—if they ran a half mile outside the incorporate limits, they escape that provision of the Constitution; and we deemed it best to leave it just as it is. It did not include a railroad running through a village or city to another, or ending in one; and we left it to the courts to say what should be a violation of this provision of the Constitution, if they authorized a railroad running forty or fifty or sixty rods beyond the limits of a city or village. We do not know of any way to escape that difficulty and prevent evading the provision. The object of the provision was to limit it to the city and village railroads.

Mr. PRINDLE—I will modify my amendment so as to have it read "where the same shall be wholly or principally operated within any city or incorporated village," etc.

The question was put upon the amendment offered by Mr. Prindle, and it was carried.

Mr. LIVINGSTON—I move to amend section 28, in the eighteenth line, by substituting the word "in" for the word "for," and adding at the end of the nineteenth line the words "no

special or local law shall be enacted." The object of this amendment is to prohibit the Legislature from passing special laws where general laws are applicable. That is the meaning of the present wording, but my amendment will express it more clearly, and corresponds with the Constitutions of other States where such a provision has been adopted. It will then read: "And the Legislature shall pass general laws, providing for the cases enumerated in this section, and in all other cases where a general law can be made applicable, no special or local law shall be enacted."

Mr. RUMSEY—I hope that provision will not be adopted. It seems to me that it will lead into interminable difficulty. It leaves it simply to the courts to say whether general legislation can be made applicable—whether the case under discussion is one in which the Legislature might have passed a general law embracing the matter; and I think it will be found that it will make this provision utterly impracticable in its application in the ordinary business of life.

Mr. RATHBUN—It seems to me that the whole scope and object of the gentleman's amendment is secured by the section itself. The very first words of the section are "The Legislature shall not pass local or special laws in either of the following cases." It prohibits doing any of these things by special laws, and then concludes that the Legislature shall pass general laws to provide for the cases enumerated in this section, and for all other cases where a general law can be made applicable. I do not see but the prohibition, in the first place, is precisely what the amendment prohibits at the end of the section. It is a mere repetition of it, it seems to me, without improving it at all, repeating at the close of the section the same provision which is contained in the commencement of the section.

The question was put on the amendment offered by Mr. Livingston, and it was declared lost.

Mr. HALE—I move the following as a substitute for section 6:

"No private or local bill which may be passed by the Legislature shall embrace more than one subject, and that shall be expressed in the title."

The section which I propose to substitute for section 6 is the same as section 16 of article 3 in the existing Constitution. Section 6, when it was before adopted in Committee of the Whole, was passed without attention being called to the change which it effected or proposed to effect. It was adopted without discussion. It seems to me that the provisions of this section, if adopted, are exceedingly important, and that they will, in fact, be too great a check upon the Legislature. "No law shall embrace more than one subject, and the matters necessarily connected therewith, which subject shall be expressed in its title." If this section is adopted, the effect will be this: that in addition to the questions which gentlemen are able to raise now, they will be enabled to criticize the title, and unless the title contains a full statement of the subject-matter, and unless every clause and every line in the act is not only connected, but necessarily connected with the rest, the whole law will be pronounced

unconstitutional. Under the provision of the existing Constitution, the courts have been compelled to declare unconstitutional many laws by reason of defects in the title. I will refer the committee to the very last volume of the Court of Appeals reports—35 New York Reports, page 499—and the case of the People ex rel. John McConvill, etc., respondent, v. Isaac Hills, appellant—where it was held:

“It is not sufficient to state in general terms in the title of a private or a local bill that it is an act to amend a certain chapter of the laws of a previous year where such chapter exists, of various sections subject to distinct amendments. I ask the attention of the committee to the result that will follow, if that rule is to be applied to every act. Suppose an act to be introduced into the Legislature to punish bribery or corruption on the part of members of the Legislature. Some gentleman who has an object in making that act unconstitutional, manages to get inserted, by way of amendment, some provision which is not necessarily connected with the subject of the act. The result will be if this same gentleman who procures this amendment shall be afterward indicted, or any action be taken against him under the act, his defense will be, “The act is unconstitutional. There is the amendment I proposed and which was adopted, which is not necessarily connected with the subject of the act.” I hope the Convention will not sanction this change, which there seems to be no demand for, and which is sure, I think, to lead to a great deal of litigation and embarrassment.

Mr. RATHBUN—The object of that section was one that certainly, if it could be perfected without injury, it would be very desirable to perfect. It has been the habit for years to ingraft upon the law passed upon one subject, an entirely independent bill—an appropriation of money, or some statute or provision that would never find its way through the Legislature fairly and openly—which is smuggled into the body of the bill, and goes through and works an immense amount of wrong, and injustice and mischief, simply because there is no provision to protect the people against that kind of stealing in a legislative form. The object of this provision is to stop that—to prevent, on the passage of an appropriation bill, the smuggling in of some clause repealing some act, that some member of the Legislature found impossible to introduce in any other place, or putting into one bill some other bill appropriating moneys for some other purposes, or for other persons, mixing up legislative subjects entirely incongruous and entirely independent, and putting the whole act through on the strength of the fact that the principal object is a good one; thus by stealth carrying through matters that could not obtain any sanction in the Legislature in any other way. How is that to be stopped? Certainly that is an evil, and the question is how is it to be prevented? The idea of the committee was that this restriction, although it would require care and skill in legislation, so that the title of the bill shall express truly the intent and object of the bill, was what we needed to prevent the kind of legislation which is so mischievous, and has always been so. Now, in the

case spoken of by the gentleman from Essex [Mr. Hale], there is a reference, by chapter, to a statute to amend a statute of some two hundred odd sections, and if I recollect aright, without stating in the caption or title, expressly what the bill itself was. It stated correctly the bill to be amended, but the precise object of the bill under consideration was not clearly stated. Now, it seems to me that the Legislature, with a very little care and attention, would certainly be able, after they have passed a bill, to sit down and provide a caption which would fairly indicate the purpose and effect of the bill, so that it could not be declared unconstitutional by reason of its not having such a clear and definite caption. If this provision be retained, the preparation of bills will require skill and care, and judgment, and honesty, because it will prevent dishonesty so far as it can do so, by declaring that all the legislation obtained in contravention of it, is of no avail whatever, because unconstitutional. I am in favor, therefore, of retaining this provision.

Mr. LIVINGSTON—I feel convinced by the argument of the gentleman from Cayuga, [Mr. Rathbun], that this is a good provision, and I do not anticipate any difficulty arising from the causes suggested by the gentleman from Essex, [Mr. Hale], because in looking over the Constitutions of the several States I find that a similar provision has been adopted in many of them, viz., in Nevada, South Carolina, Kansas, Minnesota, Maryland, Kentucky, Michigan, Nebraska, Ohio, Pennsylvania, Louisiana, Texas, Georgia, Indiana, Iowa, Alabama, New Jersey, California, and Missouri; and I certainly think that if it had worked badly it would have been found out before this.

Mr. ALVORD—I would call the attention of the gentleman from Essex [Mr. Hale] if I understand the purport and meaning of his amendment, to some facts with reference to this question in the past history of the State. There have been a great many cases where a single appropriation bill appropriating money legitimately, has had blindly put into it a clause by which the power with reference to the transaction of business in connection with the canals, has been diverted from the officer, entitled to exercise it to some other. Again and again has this happened, and in this way, insidiously, the power has been taken from the Comptroller and from the canal commissioners, and put into the hands of the auditor; and it has been done in very many instances, as I know, without the knowledge of the Legislature that passed the bill. The bill would be simply an appropriation bill appropriating so much money for the purposes of the canals, and in that bill would be a simple clause of a few words by means of which the entire power with reference to the matter would be transferred from one State officer to another, a thing which would never in the world have been done by the Legislature if it had been understood at the time. Now under this provision requiring the subject in a bill to be one, and requiring the matter contained in the bill to be expressed in the title, that cannot be done in the future. Inasmuch, therefore, as this provision has obtained in several States of the Union and has worked well, and in our own State, so far as regards private bills, has been

found of great advantage, I trust that it will be retained.

Mr. MERRITT—It strikes me that the objection raised by the gentleman from Essex [Mr. Hale], so far as the titles of bills are concerned, is obviated by the seventh section. With regard to expressing the substance of a bill in the title, the object it seems to me is, that when bills come up for passage in either branch of the Legislature the representatives shall understand, by merely reading the titles of the bills for what they are to vote. Every member who is at all familiar with the modes of passing bills in the Legislature, especially in the hurried part of the session, knows that members have no time to look through and carefully examine the bills, but have to depend entirely upon the ear to determine the provisions of the bill upon which they are called to vote. But they can at all times examine carefully the title of a bill, and the object of this provision, so that by doing so they may be able to get with certainty a correct idea of what the bill is for, and all that it requires is that the same care shall be exercised in expressing in the title what is designed, as in the body of the bill. The precaution is a necessary one, and I therefore hope that this provision will not be stricken out or changed.

Mr. RUMSEY—By reference to our annotated Constitutions here, I find that this same provision is inserted in a large number of State Constitutions.

Mr. HALE—So many have spoken in opposition to this amendment, that I wish to say one word more in its behalf. That the evil alluded to by the gentleman from Onondaga [Mr. Alvord] exists in the passage of acts in the Legislature I do not deny, but my objection to this provision is, that in order to remedy the evil, it effectually blocks legislation. It is like the case spoken of by Dickens, of the man who cut his boy's head off to cure him of squinting. [Laughter.] The gentleman from Kings [Mr. Livingston] argues that we should adopt this provision, because several other States have adopted similar provisions. Now, in this digest which we have of the Constitutions of other States, I find there are several States in which similar provisions seem to have been adopted. The digest, however, does not purport to be full; and whether there may not be modifications in the Constitutions of those States, which would make some difference in this respect, does not appear except in the cases of two States. By referring to page seventy-seven of the annotated Constitutions, I find that in two States, Indiana and Iowa, the evil alluded to by the gentleman from Onondaga [Mr. Alvord] is sought to be provided against in this manner. After enacting a provision that each bill shall embrace but one subject which shall be fully indicated by its title, they add a provision that such an act shall be void only as to so much thereof as shall not be expressed in the title. Now, I submit that some such modification as this should be inserted here, in order to meet the difficulty which I have suggested, that a good law, demanded and needed by the public for the general benefit, might be made wholly void and unconstitutional by reason of some one smuggling in some provis-

ion which was not expressed in the title, and not necessarily connected with the principal object of the bill. I will therefore modify my amendment, and propose, instead of substituting the provision of the old Constitution, to add to this section this provision contained in the Constitutions of the States of Indiana and Iowa: "But if any subject shall be embraced in the act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title."

Mr. S. TOWNSEND—I think sir, that if we look closely into these annotated Constitutions of the several States, we will find that where they allude to the subject, their provisions are based upon the article in the Constitution of 1846, in which this subject was first dealt with; but of course if any improvements have been introduced in the meantime, they ought to be recognized and adopted. The origin of the difficulty is found in the year 1804, when a lawyer as eminent and adroit as Aaron Burr, who had in charge the interests of the Manhattan Bank of the city of New York, had inserted into a bill that was passing with the innocent title of "An act to incorporate the Benevolent Cordwainers' society of the city of Albany," a provision that the restraining law that had been recently passed, limiting individuals and corporations from issuing paper as money should not apply to the Manhattan Bank. Since the year 1804, the people and the honest members of the Legislature had been deceived by these interpolations in the statutes. A young gentleman of New York, an honored member of the legal profession, attempted by the phraseology of the Constitution of 1846 to prevent the continuance of that practice, but without success. I hope, however, that the ingenuity of a body so largely constituted of members drawn from the legal profession as this is, will take care now to guard this matter so that the desired object may be attained, and that this practice, which has been abused since 1804, as I have just suggested, may now be suppressed.

Mr. RATHBUN—I am of the opinion, sir, that the proposition of the gentleman from Essex [Mr. Hale] to adopt those provisions from the Constitutions of the States of Indiana and Iowa is not objectionable in any way, and I do not see why it may not be safely connected with this section as it now stands.

The question was put on the amendment offered by Mr. Hale, and it was declared carried.

Mr. FULLERTON—It seems to me that the twenty-third section requires some further amendment. Let me call the attention of the committee to the language of it:

"No railroad shall hereafter be constructed or operated within any of the cities or incorporated villages of this State until the consent of the local authorities," etc.

Now, sir, as the section stands, no railroad now building in any city or incorporated village in this State can be operated after the adoption of this Constitution, until the consent of the local authorities has first been obtained. I do not suppose it was the intention of the committee to bring about that state of things. I suppose the words "or operated" should be stricken out, so that the

clause will read: "No railroad shall hereafter be constructed within any of the cities," etc. There is a still further objection to this section, it seems to me. It says, "until the consent of the local authorities of said village or city shall be obtained for that purpose," etc. Now, the difficulty is, in determining what the local authorities of the city or village are, or what authorities are meant by these words. Take, for instance, the city of New York; does the phrase here mean the mayor, common council and aldermen? These, it will be remembered, are not the only local authorities of that city. The recorder of the city of New York is a local officer, having local authority. The city judge of the city of Brooklyn is a city officer having local authority. I suppose, therefore, that should be either stricken out, or else that the section should be so framed as to distinguish specifically what local authorities are meant by it. The first amendment that I offer is to strike out the words "or operated," so that the section will read: "No railroad shall hereafter be constructed in any of the cities or incorporated villages in this State until the consent of the local authorities," etc.

Mr. WEED—I would suggest to the gentleman from Orange [Mr. Fullerton] that if he changes the word "or" to "and," it will obviate the difficulty.

Mr. RATHBUN—Why not strike it out?

Mr. CONGER—It seems to me unnecessary to strike out the word "operated," because those who remember the language of the general railroad act will observe that the words "constructed and operated" go together. The criticism of the honorable gentleman from Orange [Mr. Fullerton] is based upon the supposition that the legal construction of this clause would limit the application of the word "hereafter" to the word "constructed," and that it would not apply to the word "operated." If there should be any doubt about that, it would be sufficient to change the position of the word "hereafter," and let it come in the section after the word "operated," so that it would read: "No railroad shall be constructed and operated hereafter," etc. The construction of a railroad does not necessarily imply the operation of it, and if you are using terms that have a legal significance, it seems to me that it would be unwise to leave out the word "operate." In order, therefore, to obtain the sense of the committee, I move to amend the amendment by striking out the word "hereafter" where it occurs in the first line, and inserting it in the second line after the word "operated."

Mr. FULLERTON—I would like to have the honorable gentleman from Rockland [Mr. Conger] explain to us the difference between the present reading of the section and its reading after his amendment.

Mr. CONGER—I hardly suppose that that is necessary, because I have explained that the criticism of the honorable gentleman from Orange is not correct in limiting the use of the adverb "hereafter" to the first verb with which it is connected in the sentence. I propose to make this amendment in order to obviate the objection, and to obviate the necessity of striking out the word "op-

erate," which I consider to be an important word in this section.

The question was put upon the amendment offered by Mr. Conger, and it was declared lost.

The question was then put on the amendment offered by Mr. Fullerton to strike out the words "or operated," and it was declared carried.

Mr. VEEDER—I move to strike out the entire section. I believe, sir, that this section, as now amended, will give an undue advantage to the roads that are already in existence. It produces an unfair competition, and prohibits the construction of other railroads in the same manner in which the roads now in existence have been constructed, and it virtually creates a discrimination in favor of railroads already in existence, and thus enables them to establish monopolies in our cities. There are many lines in our cities on which it is necessary to run railroads, and if this provision is adopted it will put an additional burden upon any new company that may be organized to build a road, thus giving an unfair advantage to the old roads.

Mr. PRINDLE—I desire to propose another amendment. The more I examine this section, the more I am satisfied that the amendment proposed by me ought to have been inserted before the word "constructed," in the first line, which would have covered the whole section. That amendment is to insert the words "wholly or principally" before the word "constructed," in the first line, so that it will read "no railroad shall hereafter be wholly or principally constructed," etc. As the section stands now, every railroad hereafter to be constructed in this State will be compelled to obtain the consent of the local authorities of every little incorporated village through which it may propose to pass; such consent being absolutely necessary, in order to allow its construction and operation. Then the company will be required to obtain the consent of one-half the property owners along the line or street. In case that cannot be obtained, the company may obtain the consent of the general term of the supreme court of the district; but the consent of the authorities of the incorporated village must be obtained at all events. That is the section as it stands. Now, an incorporated village may cover a large amount of territory on the route proposed by the railroad, and the local authorities of a little incorporated village may have it in their power to prevent entirely the construction of a valuable and necessary road. Now, if the words "wholly or principally" are inserted where I suggest, the whole section will be covered, and it will relate, as I suppose it is intended to relate, to street railroads in cities. I move, also, to strike out these words where they were first inserted and place them where I now propose.

Mr. RATHBUN—I am not at all opposed to the insertion of a provision in the section which shall preserve all the rights that now exist in favor of railroads of any considerable length; what we refer to as the ordinary railroads of the country—roads that run from some one point a considerable distance to some other point in the State, and which are not intended to be for the convenience and accommodation of cities, villages

or towns merely, but for the general public accommodation. This section is evidently designed to operate only as to local railroads which are used by the cities and villages for the accommodation of the inhabitants of those localities. If we put the words "wholly or principally" in this section, we have secured nothing whatever to the city or village concerned, but we still leave it entirely at the mercy of the railroad builder, who may evade the intention of the law by making five miles of railroad which is "wholly or principally" in the country, and not in the city or village. So, in regard to many villages, the provision may be avoided by making a portion of the road outside of the corporation a little longer than that inside. Thus the whole intent of your provision is overcome and destroyed, and the people have no protection whatever against the construction of these local railroads. Now, perhaps the term "street railroad" might more effectually provide against the difficulty and objection raised by the gentleman from Chenango [Mr. Prindle]. I am very much opposed to the proposition which he submits by way of amendment, because it furnishes a very easy mode of evading the requirements of this provision, and I think it is better to leave it all out than to put it in in the form which he proposes. The gentleman from Steuben [Mr. Rumsey] has put into my hands the following, which I will read, after which I will offer an amendment which I hope will be satisfactory. This is what the gentleman hands me: "but nothing contained in this section shall be so construed as to apply to any continuous line of railroad passing through or terminating in any such city or village." I now propose, Mr. Chairman, an amendment which I hope will meet the approbation of the gentleman from Chenango [Mr. Prindle]. It is to insert the word "street" after the word "no," the first word in section 23.

Mr. VEEDER—Will the gentleman allow me to call his attention to the fact that there are roads in cities known as underground and elevated railroads, and not at all as street railroads?

Mr. BICKFORD—The amendment suggested by the gentleman from Steuben [Mr. Rumsey] is the only one, it strikes me, which meets this difficulty, and I think it does meet it; and if the section is to be entertained at all, I think that amendment should be adopted.

The question was put on the amendment offered by Mr. Rathbun to the twenty-third section, and, on a division, it was declared carried, ayes 51, noes not counted.

Mr. WEED—I move to amend the twenty-third section by striking out in line seventeen the word "highest," and inserting after the word "bidder" the words "who will build and operate the said road at the lowest fare;" and also by striking out all of the section after the word "direct," in the twentieth line, so that it may read, "the franchise allowing said railroad to be built and operated shall be sold at public auction, and to the bidder who will build and operate said road at the lowest fare." I believe, Mr. Chairman, that the committee who have reported this section, have honestly endeavored to remedy the evils that exist, and to provide some better sys-

tem than that which we now have; but I believe, too, that they have failed signally in this section; and I believe, further, that this section, if adopted, will be worse for the people of the cities and for the people of the State than it would be to leave the Constitution as it is to-day. Without taking much of the time of this Convention, I will state why I believe this to be so. In the first place, I deem the idea of the ownership of this franchise in the city to be a mistaken one. I do not recognize the right of the city of New York or of any other city or village in the State to lay a toll on the people of the city or on the people of the State to sell out their streets, so that the poor people of the cities, the laboring classes, and those who hold little or no property, and the people of the State who visit the cities, will have to pay tribute to them. From the nature of the streets of a city or town, that is not a correct principle. Broadway is used as much by the people of the country as it is by the people of the city, and rightfully so; and I say that the people of the city of New York have no right to levy a tax upon the people of the country who visit the city, for riding up and down that street. Again, suppose you sell this franchise; it inures to the benefit of the property holder in the city, and nine-tenths of the people of the city and the people of the State who visit the city, pay tribute in consequence. To-day, as the Constitution stands, if a city railroad upon Broadway should charge five cents fare per passenger, the Legislature could reduce the fare to four cents, or to three, or to two cents even, and the reduction would inure to the benefit of the great bulk of the people throughout the city and State. If you pass this section, you put up a franchise at public auction and sell the right to build a road and charge unlimited fare, and in doing so, you establish a different principle between the owner of the railroad and the State from that which governs any other ordinary grant. The purchaser of this franchise has bought and paid for the right to charge five cents or ten cents or whatever he may choose, whether it is really worth three cents or two cents per passenger, and you cannot reduce the fare, if it is excessive, because you have made a bargain to that effect between the people of the State and the persons who own the franchise. Again, the people who consent to purchase this franchise will combine, and you will get a very small sum for your franchise and you will inevitably have a large price to pay per head for carrying passengers; but put it in the other way, and let the people have the benefit of the grant of the right to build this road, and the builders will bid at a certain price per head for carrying passengers, and you will get a great deal more for the people of the State and the city than in any other way. As I look upon it, Mr. Chairman, the gentleman from Kings [Mr. Veeder] is substantially right with reference to those franchises in cities. I believe it would be better for the city of New York to-day if there was a railroad in every one of her streets. Look at Philadelphia. Look at the difference between its railroad facilities and those of the city of New York. They adopt this principle in Philadelphia, and they have no

trouble. The same principle has been adopted in Baltimore, and the right to build roads has been given to those who give security to build them for the least fare, and who would, at the same time, give the highest price for the grant; and in Baltimore they have much better railroad facilities than in the city of New York. If we must have a section like this, it should be so framed that the poor of the cities, and the persons who are casually traveling through the cities should not be made to pay tribute to the property holders of the cities; and at the same time, the revenue secured by the low rates of fare would be worth tenfold more than the mere pittance which, under the other system, you would be able to get by selling the franchise. There is a provision that the consent of the property holders along the line of the road should be got. I deny that that is right in cities. I admit that those who own houses in the city of New York might not want a railroad to pass their doors; but the progress of the times necessitates horse railroads as one of the great means of conveying passengers through cities, and if the railroad will pay through the street upon which such houses are located, it must be because the public will use it enough to make it pay; and if they will use it enough to make it pay, that shows that it is necessary for the public; and private interests must give way to public interests in cities, the same as they do in the country with reference to steam railroads. It would be thought monstrous to say that the railroad company must get the consent of the farmers to run their road through their land; because, to establish that principle, would be substantially denying the right to build the road at all. This provision in reference to the property holders in cities, if adopted, would substantially forbid the building of street railroads. This is qualified, however, by a reference to the supreme courts, and for that reason I do not so much object to it, although I would prefer to make it compulsory to apply to the supreme court in the first instance. I would like to see this section so framed, that the existing roads could not, in one way or another thwart the public good by preventing the building of other roads where they were necessary. For these reasons, therefore, if we come to that point, I shall vote to strike out the whole section, believing that it will be better to do so; but if the section is to be retained, I say that the least possible rate of fare at which the roads can be run should be secured to the public.

Mr. VEEDER—I desire to call the attention of the committee for one moment to the manner in which this section is drawn. Ostensibly it provides that the parties who propose to construct a railroad shall first make application to the property owners for their consent, then apply to the supreme court if the consent of the property owners is refused; but if gentlemen will read the section carefully, they will see that it reads in this way: "In case the consent of such property holders be not obtained," not, observe, in case it is refused, but in case it "be not obtained;" in other words, they can apply, in the first instance, to the supreme court, and allege that the consent of the property holders has not been obtained, without making any application whatever to ob-

tain the consent of the owners of the property along the line of the route. That is the meaning of the section as it stands. Now, I submit that, after an examination of this section, I cannot see what possible good will result from its adoption. There is ample provision now for the establishment and regulation of city railroads; and if the whole subject was left to the local authorities there could be ample provision made by which the corporations, both those in existence and those to be created hereafter, should pay to the city revenue a certain license fee. If it is the object of this Convention to establish a provision that will create a revenue for the benefit of the respective cities out of these corporations, the system of license is the way it can best be reached, in my judgment. I cannot see what possible benefit to the city revenues will arise from this section. The only possible advantageous effect it can have will be to benefit the roads now in existence, by preventing the establishment of new lines of roads upon equal terms with those already established. As to this provision in the section about putting up the franchise and selling it to the highest bidder, I fear the friends of the measure are misled. A combination may be made between all the parties who desire this franchise, agreeing that they will give but a nominal sum for the right to build a certain road, and the person who bids this amount being the highest bidder will be entitled to have it struck down to him, thus making the whole operation a mere farce. Now, if you will give the city authorities the exclusive power to establish these railroads, and at the same time authorize them to provide for the payment of a license fee upon each car that may be run, you will have established a method by which a considerable revenue will be obtained from the railroads. I am clearly of opinion that the striking out of the word "operated" can result in no benefit to any one, unless to the roads now in existence. Thus I desire to put all the roads on the same footing, so far as you can, without interfering with the vested rights of existing corporations; and I am unwilling to support a section that so plainly indicates that its main effect will be to the material advantage of existing roads.

Mr. M. I. TOWNSEND—I think that this section is drawn with a mistaken notion as to what is the public interest. For myself I believe that the public interest of the State in this is, that the greatest number of street railroads practicable should be built and operated; and that instead of putting restrictions upon them it would be much better for this Convention to provide that the inhabitants residing along the streets in cities and villages, and the local authorities of these cities and villages should have no power to prevent the building of street railroads when demanded by the interests of the public. Street railroads are an institution of the day. The business of life in modern times in cities and villages cannot be carried on without them. Shall we try then to prevent the building of any more? Have they any too many street railroads in the city of New York? How often does it happen that people from the rural districts, visiting the city, having occasion to ride in the street cars,

find themselves able to procure a seat, and are not obliged, after paying their fare, to stand up all the way? It is often the case that eighteen passengers are accommodated with seats while there are thirty-six in the same car who are compelled to stand up the entire distance. Now, the remedy is more roads, more cars, more railway accommodation. We know perfectly well that it is for the interest of the existing roads to throw every embarrassment possible in the way of the construction of new roads. It is increasing their profits to prevent the construction of other roads. If a car now carries fifty-four or sixty passengers having seat accommodation for only eighteen, it is plain that if another road were built in the next street parallel with this one, the profits of the existing road would be proportionally reduced; and so it is that these roads that are already in existence are necessarily partisans, standing in the way of any additional accommodation to the public. I know that we have been regaled from time to time with the story of the amount of corruption practiced in the Legislature in endeavors to obtain grants of railroad franchises in our large cities, and particularly in the city of New York. We hear a great deal about the immense amount of money that has been expended for a franchise for the road on Broadway. Now, sir, I am from the rural districts; and I must speak upon the judgment of a man who lives at a distance of one hundred and fifty miles from New York; and my judgment upon this point is that no other such great boon could be furnished to the people of the State of New York and of the city, as the construction of a surface railway through Broadway; and it is to me a great wonder that the power of those whose vested interests would be injured by such a railway has so long succeeded in thwarting the manifest interests of the people of the city and State of New York, because it has been very well remarked already in this Convention that it is not the people of the city alone who are accommodated by the street railways of the city. I agree in the main with the remarks of the gentleman from Clinton [Mr. Weed]; but there is one remark with which I do not agree. He says that if he owned a house upon a street in the city of New York, he would be unwilling to have a railroad upon that street. Now, in that, I differ from him entirely. My middle life, for a period as long as is generally allotted to man, has been passed in a city, and a state of things exists in that city by which I am deprived of the benefit of a railway past my own door. I am not the owner of any railroad stock, but I am not only willing to have a railroad constructed past my door, but for years I have been willing to make a gratuity of five hundred dollars to any one who would build and operate such a road. Sir, it is a mistake to suppose that a horse railway is a public nuisance. What nuisance is the horse railway here upon State street? What nuisance is such a railroad anywhere?

Mr. WEED—I wish to correct the gentleman. Either I did not use the word I intended, or else the gentleman mistook me, because I agree with him on this subject; and what I meant to say was that I could imagine people who really

felt that such a road was objectionable, passing their doors.

Mr. M. I. TOWNSEND—With that explanation the gentleman and myself are completely in accord in regard to this matter. At the first introduction of these railways, there was a fashionable objection to them. It became very fashionable for gentlemen who owned their carriages to conceive that they would be vastly injured by the running of railroads through streets, the cars of which would frighten their teams; but experience has shown that that was a mistake, and that horses became just as much accustomed to the passage of rail cars as to the passage of ordinary carriages; so that in reality this objection to horse railways does not exist. In conclusion, sir, I simply say that, in the present state of civilization, horse railways in cities are the ordinary and necessary means by which the people pass to and from their workshops, counting-houses and dwellings. Every class of citizens, the wealthiest and the poorest, use them as their ordinary mode of locomotion; and instead of passing a constitutional provision to prevent the extension of the horse railway system, we should, if we do any thing on the subject, pass constitutional prohibitions against the actions of those who would put obstructions in the way of their extension.

Mr. RATHBUN—The intent of the committee is apparently misconceived by several gentlemen, and by none other, so much as the gentleman who has just taken his seat [Mr. M. I. Townsend]. Instead of the committee desiring to do any thing to interpose any manner of obstruction in the way of the construction of city railroads, their object was to facilitate their construction, by removing difficulties in the way, and rendering it unnecessary for any person, or portion of the people of a city who desire street railroads, to come to the Legislature and petition them, and perhaps be compelled to do what has been charged here over and over again, use money for the purpose of obtaining a right which ought to belong to the people who are to be benefited or injured by the exercise of it. This section was drawn up by a gentleman who resides in New York city. Its paternity is entirely his, though he is not present now to defend or vindicate it, and I feel very little responsibility in regard to it myself further than this, that I feel bound to remonstrate against the misconception existing on the part of the gentleman from Rensselaer [Mr. M. I. Townsend] that this section was designed to prevent or to interfere with the construction of railroads in cities. The intent was to provide that the people and the government of cities should have the sole power and right to authorize the construction of railways within their own corporate limits; and not to allow any body outside the Legislature or any body else, to stand in the way of the full exercise of their right, or the full enjoyment of all the benefits accruing from the increased facilities for communication in these localities. Whether the provision will effect the object, is another question, but that was its intention. One objection is, that the section proposes that the right to construct a railway be obtained from the corporation by putting up, and selling it

at public auction, the people of the city having the benefit of the sale. Now the gentleman from Clinton [Mr. Weed] objects to this, because it is imposing a tax upon the poor people of the cities. It certainly seems to me that there is some misconception here, because if a franchise is sold and brings money, that money goes into the city treasury, in place of a certain amount of taxes, and goes for the benefit of the poor of the city. In regard to controlling the price of fare, the committee supposed that it was proper to leave that entirely to the corporation authorities. It seems to me that the gentleman from Clinton [Mr. Weed] is entirely mistaken in his views of this question; and I believe it is according to democratic principles that the government of a particular locality ought to be intrusted with the power to determine those questions which pertain entirely to the people of that locality. Now sir, complaint has been very frequently made during the session of this Convention, that commissioners have been appointed by the Legislature to take charge of, and govern New York city, thus interfering with local government. In accordance with the idea that that was an unjust interference, it is proposed to take away that power from the Legislature, and give it to the corporation who are created by the people, and are responsible to the people. Is there any thing wrong in this? It has been said here very often that it will not do to trust the Legislature. Shall we not then, trust the local authorities of the cities? If not, then in the name of common sense, who is to be trusted? Where are we to go? The representatives of New York come here to complain that the Legislature have interfered in their local affairs, and now when the committee propose to do away with that interference, and hand over the control of this very important matter to the corporation, this also is complained of. It is said too that the franchise is worth an immense amount of money. Then let it be sold, and the people have the benefit of it. Then, in regard to the rate of fare. Who should govern that? Should not the local authorities govern and control that question? Is there any danger in allowing them to do so? Will they allow too high a rate of fare to be fixed upon the railroads of the city, and if they do, will the people submit to it? Why, sir, the people will turn these men out, and put in others who will do the business better. Now, I do not see, and I therefore contend, that this is not subject to the difficulties stated by gentlemen on this floor. It may be true that when you put up these franchises to be sold in New York, taking that city for an example, all the parallel lines of railroad will come together and agree that they will put down the price of franchises so that it shall amount to nothing. There are several persons living in New York, I suppose, who may not be entirely bound up in these roads. There are men there of considerable wealth. It has been said, and I have no doubt of it, that men can be found there who will build a railroad on any line, even on Broadway, if permitted to do so. If I am not mistaken, one man residing in New York once offered to pay several millions of dollars for the right to build a road in Broadway. According to

my recollection, a gentleman owning property upon Broadway, counted a very respectable gentleman, a man of some property, offered two millions of dollars for that franchise. It has been said Broadway ought to be occupied by a railroad. I agree with that. I think Broadway ought to have a railroad. I should like to ride up and down Broadway when I am in New York. I would like to see a good railroad there, and all the omnibusses and other inconveniences done away with. How shall we get it? By refusing to take hold of this subject, and leaving it in the hands of the people?

Mr. WEED—May I ask the gentleman a question? He himself was attempting to get at the same result in reference to this amendment. I wish to ask him this—if, in selling a franchise for a certain sum, say two millions of dollars, instead of reducing the fare to the lowest possible point, he is not taking from the poor and giving to the rich? Because the poor are compelled to take this cheap mode of conveyance, the rich, who pay a large proportion of the taxes, therefore receive a large portion of the two millions. They use their carriages, and are not benefited in any shape except by the receipt of the money. But the poor man is compelled to use the railroad car, and thus he really pays these two millions into the public treasury.

Mr. RATHBUN—I am very, little skilled in answering questions. I know very little about the contrivances of cunning, shrewd men in the management of railroads. It is very difficult for me to perceive precisely the result which will grow out of the construction of this road. But there are it seems to me, some general principles that would apply to this case, and I refer to this as an answer to the gentleman. In the first place there is competition. There is a road on the left of Broadway, or half a dozen of them, and some on the right. There is competition. That is one thing that will control fares. The right to determine the fare is in the corporation. They have a right to fix it. The people will not allow themselves to be taxed unreasonably for the accommodation they receive. To say that, is to say that the party in power is going to do precisely what they dare not do. The votes of the poor people of New York can control every election, on any day; they are not the men to be taxed unnecessarily or unreasonably for the benefit of corporations, nor for the benefit of the rich. The love of place and power is altogether too strong, in my judgment, aided by competition, to permit any kind of complication in regard to the question of fares. I shall be willing, and I am willing to leave the question of fare to the corporate authorities of cities and villages where these railroads are proposed to be built. They have a right to determine the maximum fare, they have a right in the contract to reduce the fare. We have no right to say that they will not exercise the power reasonably, rationally, prudently. Now sir, it seems to me, that, notwithstanding the criticisms and objections raised by the gentleman, it is pretty difficult to frame a section in the Constitution that will confer the power upon the persons to be benefited by the construction of these roads less liable to objection than that offered by

the committee. As I said, the paternity of this section belongs to a gentleman from the city of New York, who is not now in his seat.

Mr. M. I. TOWNSEND—I find no fault with the paternity of this section. I care not from whom it comes; the trouble is with the section itself. I want to ask the gentleman from Cayuga [Mr. Rathbun] if he presents the argument quite fair, in contending that this is a proposition to give the power of granting railway franchises to local corporations? I find no such thing in it. It does not say and it does not provide that local corporations shall have the power of granting this franchise; but as I read the section, it only puts this burden—throws this obstruction in the way of granting franchises for street railways, in addition to all the other difficulties and other obstructions created by the Constitution and furnished by the Legislature; in a word, these are only so many additional difficulties.

Mr. RATHBUN—Will the gentleman allow me to call his attention to the twenty-eighth section, which requires that the Legislature shall pass a general law granting the right to lay down railroads in any street in any city. And this is simply a provision that under that general law it shall only be done with the assent of the city authorities. There is no restriction at all.

Mr. M. I. TOWNSEND—The gentleman entirely confirms my statement that it was designed as an addition to any other burden that might be imposed by the Legislature under this constitutional provision in the twenty-eighth section. I may be wrong in other respects; in this respect I cannot be wrong, because there is nothing else in the twenty-third section except the imposition of two or three burdens; first the Legislature may pass such laws as it will, and yet no such road shall be authorized to run so long as the local legislature or authority shall oppose it; that although the Legislature may pass provisions such as they will, these provisions shall not take effect unless this proportion of the property holders along the road shall consent to it, or unless the supreme court of the district shall give its sanction to the building of the road. I wish not to speak invidiously of the corporation of the city of New York; but if the interests of the rich men in the city of New York, whose capital is invested in railroads, require that no other railroads should be built, how long will it take to get the consent of the common council to build that road? You might as well submit it to the very men themselves, who desire that there should be no opposition to their enterprises, by means of which they are putting in their pockets millions of money every year. Therefore, these provisions are obstructions in every form and shape. They are burdens put upon any one who shall attempt to accommodate the public. Now, I sympathize with the rich men of the city of New York who have to pay taxes. But will the taxes of the wealthy citizens of New York be any greater if the mass of the people have railway accommodation by which they may travel through its streets? Does that increase their taxes? If it does not increase their taxes, why should they claim to say that the sewing girls, or the girls at work in the book binderies, should every day

pay so much tax to them for the privilege of riding conveniently and comfortably in railroad cars through the city, and from their work? The gentleman from Clinton [Mr. Weed] has stated the proposition correctly, that these franchises should be sold, if sold at all, to those who will operate the road for the lowest rate of fare. Still, although I concur entirely in that proposition, if the section is to stand, I believe it is only a source (not because the author intended it as such), but it is necessarily a source of public mischief, and can redound to no public good. All the difficulties in the way of attaining railroad accommodations that otherwise exist will exist notwithstanding this section. This section just throws so many additional obstructions in the way of public accommodations.

Mr. VEEDER—If the desire of the gentleman from Cayuga [Mr. Rathbun], and also the gentleman who drafted this section, was simply to return power to local authorities to authorize the construction of railroads within their bounds, I submit to them that the entire object will be accomplished by repealing chapter ten of the Laws of 1860, which has created all this difficulty. The Legislature of 1860 passed a statute providing that thereafter no railroad should be constructed or operated in any street or avenue in the city of New York, except under the authority and subject to the regulations and restrictions which the Legislature might thereafter impose. There is the foundation of all the trouble. Before that time the local authorities exercised this power, and they will have the right to exercise this power in the absence of this statute. If section 28, which provides that the Legislature shall pass no special statute granting to corporations or individuals the right to construct or build a railroad, should stand, that virtually repeals this law. That throws the question right back to the local authorities of the State, precisely where it ought to belong. In my judgment—and I understand the gentleman from Cayuga [Mr. Rathbun] to be in favor of that—it leaves the whole question open to the local authorities, and they can then impose that penalty or provide that the franchise shall be bought by the highest bidder. There can be in no way, in my judgment, a beneficial result to the people; the only benefit there can be will be to the roads now existing.

Mr. RUMSEY—I believe the question now is, whether the franchises for the construction of these roads shall be sold to the person who will carry passengers at the lowest rates? With regard to that question, I desire to say this: that it was well considered in the committee when this section was agreed upon, and the evil that we intended to guard against was this: If a railroad is sold at a time when every thing is high in price, it is worth more to carry passengers, whether in the city or elsewhere, than it would be when prices were lower, and when we have specie payments, and from such prices a reduction would be required. It was feared that then the price of carrying passengers could not be reduced; that it would be held by the courts that the sale of the franchise was a contract between the corporation and the persons constructing the road, and the price could not be

changed, no matter what it might be. It might be a fair price now, but ten or twenty years from now it might be an exorbitant price, yet it could not be changed. The object of this provision is to always leave it in the control of the State authorities and the Legislature to put upon the transportation of passengers upon a particular road a fair price.

Mr. M. I. TOWNSEND—I should like to ask whether it would be any the less a contract if the parties paid fifty thousand or a hundred thousand or two hundred thousand dollars for their charter?

Mr. RUMSEY—Yes; because then the rate of fare would not be stipulated—would not be agreed upon. That would depend upon the general law, and the general law at all times may be amended by the Legislature. But if there is any objection of that kind you can add at the end of this section a provision that the rate of fare over such railroads shall always be under the control of the Legislature.

Mr. WEED—The objection raised by the gentleman from Steuben [Mr. Rumsey] is an objection that may be raised to any system that you may get, and it can only be remedied, can only be provided for in two ways: first, by a provision in the Constitution that the State authorities may, at any time, take from any company its franchise, by repaying to the company what its franchise cost, and interest, if their dividends did not make the interest upon it, and resell it to the persons who will take it and pay its cost, and carry passengers at a lower rate. That can be done, and if you pass a section of this kind it seems to me it ought to be done. The other way is to leave it to the Legislature, as has been suggested. But in either view, the objection applies with the greater force to the section as it now stands than it would to the section thus amended.

Mr. CONGER—That is a point upon which I would like the gentleman from Clinton [Mr. Weed] to give some more definite information. It is charged by the owners of these grants of railroads, in the city of New York especially, that the franchises which they have received from the Legislature are in the nature of grants, and not revocable by act of the Legislature; that they are perpetual rights, and that there is no power reserved to interfere with or modify their use of the franchises. Of course, if that is so, there may be no right to provide by law for the diminution of fare.

Mr. WEED—I understand that in 1860 there were rights to lay railroad tracks in the city of New York granted to individuals—not corporations—and that the owners of these grants claim they are taken out of the operation of the Constitution, which provides that the charters of incorporated companies may be altered, amended, or repealed. They claim that. The Legislature, however, has exercised over these roads, in some measure, the right to decrease their fares. I, for one, believe that the Legislature has the right to reduce the fare upon these roads; and in 1866, in pursuance of that belief, I introduced a bill for that purpose in the Legislature which passed the House, but was defeated in the Senate. But I do not see how that question is relevant to the

question under consideration, because the pending amendment does not, as I understand it, affect the existing charters. It is only to affect charters for companies to be hereafter formed, and grants or franchises to be hereafter made.

Mr. RATHBUN—I desire to say a word in reply to my friend from Rensselaer [Mr. M. I. Townsend], who seems determined to go wrong on this question, or else I am wrong. He thinks that the object of this section is to obstruct—to add obstructions in the way of building railroads in cities. He objects that corporate authorities ought not to have any control of the question whatever. In the first place it cannot be denied but that this section would take power from the Legislature and give it to the corporate authorities of the cities and villages. Now, there is one obstruction out of the way. The Legislature is a foreign body, unacquainted with the wants or interests of a city or village—their control over this question is taken away by this amendment to the Constitution. Now, what is interposed? Why, sir, the authority of the city or village representing the people in that city or village. Does the gentleman from Rensselaer [Mr. M. I. Townsend] think it is right and proper to take away all control over the location and construction of street railroads; that every body should have a right to build a railroad in a city or village where they may please, and nobody have the right to say on what terms, or in what streets, or in what manner the road shall be built? Some power must be authorized to control and permit and authorize these things. Now, who else can do it? It seems to me nobody except the corporation authorities; no other person ought to be intrusted with it. Nobody ought to be permitted to build a railroad in a street, city or village, without the sanction of some one who should be empowered to authorize it to be done. Now, in regard to obtaining the permission of property holders. Is not that right? Is it denied that it is right and proper that the persons applying for permission to build a street railroad in any city should be required to consult and obtain the permission of the majority of the property holders upon the street through which it is to be built? Is it wrong that they should be required to make the experiment, the effort to obtain their consent. I apprehend nobody would say that it would be right and proper to permit a company to go on and build a railroad in Broadway without first asking the permission of property holders. Now, suppose they fail. Then what? Shall they have no railroad? Is the whole body of the people of the city, and the people who visit the city to be cut off from the benefit of a railroad because the property holders in the street refuse their consent to the building of the road? That would hardly be right, hardly proper. Because it would be hardly proper or right, it is provided that in case that consent is not obtained they may apply to the general term of the supreme court in that locality, or the nearest general term, for that permission. Sir, it seems to me that all the protection that property holders can desire is thrown around them. If they refuse their consent and the public interests demand, on application to the su-

preme court, upon a full hearing that court may give that permission. Now, in regard to the omission which has been suggested. I have an amendment to offer; the phrase "or in case the consent of the property holders be not obtained" I propose to amend by striking out those words and inserting the words "or cannot be obtained." Then, upon an application to the court, it may grant the power. It seems to me these are all the points objected to by the gentleman from Rensselaer [Mr. M. I. Townsend].

Mr. DUGANNE—I confess that from my knowledge of the manner in which the railroad business is conducted in the city of New York, and my knowledge of the means which have been used to obtain authority to run roads, and through my understanding of the interests which are involved in the present system of roads, I should be in favor of striking out this section altogether, or leaving the entire authority and jurisdiction over city railroads to the city authorities without restriction. It has already been said that these companies claim, in the city of New York, that they have a perpetual charter of their roads, and that no law, constitutional or otherwise, can deprive them of the privilege of running those roads for their own benefit and behoof for any length of years. But I hold, sir, that the State of New York could alienate nothing but the right to pass through its roads or streets; and that it should grant those charters with entire indifference as to what property interests are involved in the business of those who take them. Our ferries to and from the city of New York, as is well known, are leased for a term of years. There is no provision, no understanding, at any time, that on the resumption of jurisdiction by the city over these ferries, the city shall be compelled to buy the steamboats or the buildings upon the piers which have been erected by those who enjoyed the charter. I therefore propose to insert, as an amendment, in the seventeenth line, after the words "otherwise shall be sold to the highest bidder," the words "for a certain term of years," thereby restricting the company to the possession of a valuable privilege for a certain limited time, at the expiration of which, should there be cause, the city or State may resume its authority over it, and be enabled to lease it to others who will do better for the interests of the citizens. I therefore propose this amendment.

The CHAIRMAN—There being two amendments pending, no further amendment is in order.

Mr. OPDYKE—Although there is an amendment pending to one portion of the section under consideration, the discussion has covered the whole merits of the section. For that reason I desire to say a few words in regard to inserting this section in the Constitution of the State. Our experience in the city of New York with regard to the policy that has been pursued by the Legislature in granting these franchises in that city has not been satisfactory. It is a notorious fact, that most of those grants have been grounded in corruption. They have been of immense value, and they have been sought for here by clamorous applicants, and they have been finally granted without compensation to the city or to the State, but, as it is supposed, not without private compensation. I

suppose I will be safe in saying that the stock of those companies who received their grants from the city authorities before the passage of the law depriving them of that power which has been referred to, together with the stock of those who have received their grants from the Legislature, will bring ten millions of dollars more than the cost of the roads and their equipments. Now, any gentleman will at once perceive that a policy of that kind is most demoralizing in its tendencies and most unjust in its effects. Nor can I agree with some remarks that have been made here as to the absolute necessity of such railroads. In some cases they are a great convenience; in others they are a great incumbrance to the streets. They cannot do as the law directs—turn to the right to give way to carriages they meet, but they follow their iron ways unyieldingly, and must deprive the streets of the convenience of other modes of transit. Cities of Europe, larger than New York, have got along very well without them. I suppose we could get along without them; and in the opinion of some, we could get along much better without them. What is undeniable is the fact that the surface railroads upon the streets, in a large commercial city like New York, are a great detriment to the commerce of the city. They drive away the carts and other vehicles, and concentrate them in streets where the tracks are not laid; and it often causes a blockading of the great lines of thoroughfares at a time of the year when the transportation of merchandise and passengers is especially important. Now I agree with the chairman of the committee fully in his position that the local authorities should have some right of control over their streets. The streets were originally taken from private owners for public uses—for public easement as the law terms it; but granting them to railroad corporations is intended to appropriate them to private or corporate use. They should be kept entirely free, in my judgment, and appropriated in such a way as will best accommodate the public, whether that public be the residents of the city or those visiting it, so as to facilitate the transit both of passengers and freight. I think there would be a valid objection to the amendment if it prohibited the increase of these roads absolutely, because that would certainly inure greatly to the advantage of the share-holders of those that now exist. But if I understand the scope and effect of the amendment it does not propose to do any such thing. It only proposes to give to the local authorities some power of control when they perceive that a railroad franchise has been granted by legislative power in a way that is injurious to the city, injurious to the street, and expensive to the city, perhaps destroying the pavements, in the absence of any provision in the grant, requiring the proprietors of the road to repair the damage. In all such cases, I say it is proper that the local authorities should protect themselves against absolute injury and loss. When I had the honor of being a member of the city government of New York, we had an application from the Harlem Railroad company for the right of laying its track on Broadway. They supposed they had the State authority, subject to

the condition that they should have the local authority. After deliberation, we granted them that privilege, but subject to conditions which protected the public interest. We required, in the first place, that they should lay down a rail, approved by the city government, least injurious to other vehicles. In the second place, that they should keep the street always in repair. In the third place, that they should compensate the omnibus companies, which they would drive from their routes. In the fourth place, that they should furnish cars enough to accommodate all the passengers. In the fifth place, that they should pay the usual license fee for their cars. In the sixth place, that they should not charge over five cents per passenger. In the seventh place, that they should pay into the city treasury, monthly, ten per cent of their gross receipts. And there were other safeguards; and yet we let the franchise, a valuable one to the company, but, at the same time, a great protection to the city, which it had not received under grants given by the Legislature. I refer to that as evidence that if the city can have some power in this matter, it will be used in a way not to oppress any class, but to facilitate the convenience of the citizens and the intercommunication of passengers and freight. These railroads are a most serious evil in the city of New York with regard to the operations of commerce, and they are growing worse every year. The belief is becoming almost universal among intelligent men of that city that we need no more surface railroads; that those that shall be constructed hereafter shall be underground roads. We have good evidence that there are capitalists there ready to embark their money in such enterprises; that instead of being injurious to any interests whatever, they will be a great relief to the surface of the city. For example—if an underground railroad, running from the lower to the upper end of the island, of large capacities, were to be constructed for both freight and passengers, as has been proposed, we can readily perceive that its relief to Broadway and the other leading thoroughfares would be most important. For these general reasons I hope this action will be retained. If it be imperfect, let us carefully amend it so as to remove all valid objections. With regard to the amendment of the gentleman from Clinton [Mr. Weed], I have no special objection to it. I think its results will be very much the same as selling the franchises to the highest bidder; and I think, in addition to that, that is less liable to be accompanied with frauds or other improper influences in the manner of disposing of them. For these reasons I am disposed to vote for his amendment, which provides that the franchise shall be sold to the party that will carry passengers and freight at the lowest rates, and with proper accommodations.

Mr. SMITH—There is a single feature in this action which impresses my mind very favorably, and to which I wish to call the attention of the committee before a vote is taken on the question. It is well understood, I believe, by all who have paid any attention to public affairs, especially to the proceedings of the Legislature for the last few years, that these franchises in the city of New

York have been regarded as so valuable that it has led to the formation of rival companies, who have besieged the Legislature from winter to winter, with a view of getting through their own favorite schemes. I suppose there is no doubt of the fact in the mind of any individual, that thousands and thousands of dollars have been expended for the purpose of corrupting the Legislature, and inducing them to promote the particular schemes of these various rival companies. This provision, as I understand, entirely remedies that difficulty. It provides that these franchises shall be sold to the highest bidder, and would lead to fair competition in the city of New York between the rival companies, and remove all temptation to the use of corrupt means with the Legislature. By adopting this provision we shall relieve the Legislature from improper appliances, and ourselves, as a State, from those unseemly spectacles which have been witnessed in winters past, and brought our Legislature into public disgrace. I trust, therefore, that this feature will impress the minds of the committee so favorably, that they will adopt it without any essential change that shall impair its efficiency. We have endeavored since we have been together as a body, to provide a remedy for legislative corruption, and there is no one thing that is more imperatively demanded by the people of the State of New York than such a remedy. It is surprising to me that any one should object to this feature of the section.

Mr. M. I. TOWNSEND—Taking for true the conjecture made by the gentleman from New York [Mr. Opdyke] who resumed his seat a few moments ago, and entirely concurring with him, that a large proportion of the present franchises for street railways, in the city of New York, have been obtained from the Legislature by bribery, and that those advantages obtained are now worth certainly ten millions of dollars, shall I so act as to still further increase and secure and promote the advantage thus unlawfully obtained? How would the holder of one of these franchises wish me to vote to-day? Suppose he sat within the hearing of my voice, in the possession of five millions of dollars worth of property, obtained from the Legislature by corruption, and that had been increased in value enormously by there being no adequate opposition thereto allowed in the working of his franchise, how would he wish me to vote? Would he wish me to vote for or against the proposition contained in this section under consideration, and which the gentleman from Kings [Mr. Veeder] has moved to strike out? The gentleman from Fulton [Mr. Smith] says that we wish to stop legislative corruption; that we are aiming a blow at legislative corruption. I think that a body of men like this should watch a little the direction the blow is likely to take, and be very certain that, aiming a blow at official corruption, we should not bring it down upon our own faces. What has prevented the city of New York being adequately accommodated with railroads? Because, notwithstanding the remarks of the gentleman from New York, I think the opinion will be prevalent, and is prevalent in this Convention, that there are not to-day sufficient railway street communications in the city of New

York. Are there not two sides to this matter of corruption? When a railway is desired by any party, what have they to do? Can they come here and expect to speak to a legislator whose mind has not been influenced from other quarters? Has it not been known for the last five years, that any man who came from the city of New York, or any corporation which came from the city of New York, and asked for the grant of a railway franchise, had to contend with the moneyed power that had already been created and brought into existence; that would stand in the Legislature, with its bag in its hand, and bribe the members of the Legislature to deny the franchise asked for? The force of this very franchise that they have obtained, as the gentleman from New York [Mr. Opdyke] says, by corruption has enabled them continually to come and stand here with open purse during the session of the Legislature, and thus to defeat the will of the people of the city of New York—the real wish of the people of that city and the people of the State—because I would not have it understood that I only refer to the city of New York. I wish to refer in my action here, to the accommodation of the other cities. I tell you, sir, by my own experience, I know that the city of New York is not the only place where a common council can be bribed to prevent the people of the State from being accommodated. I have had the pleasure of living in a town where the same thing has been done within the last year.

A DELEGATE—Pleasure?

Mr. M. I. TOWNSEND—Yes, sir; the pleasure of living in a city of the same kind, where, if it had not been for a veto of the common council, we should have had these accommodations. I do not say that every member of the common council was bribed; but I know that a controlling member of that body was bribed to refuse to the city of Troy the common interests to which we are entitled. There is another thing. It proposes not to stop with the common councils of the cities or the Legislature, but these corrupting influences are to go beyond them. There are suits by these moneyed organizations which are to be carried up into the general term of the supreme court, and if it should happen that, by accident, a man in any district of this State had been called to the bench who had reasons out of court that should influence his action in court, would not these reasons be urged?

Mr. E. BROOKS—I assure my friend from Rensselaer [Mr. M. I. Townsend] that if he will study more than he has in the school of experience, he will find that, corrupt as the common councils are in his city, and in the city where I spend most of my time, that they will, on the whole, fall far short of the corruption in the bodies in which he seems to repose so much confidence. Let me give a little experience of my own. As a member of the Legislature some ten years since, I was then authorized by men of the character of A. T. Stewart, Mr. Haight, and other capitalists of that city, to make a proposition, which I presented in the State Senate, that they would give two millions of dollars for the franchise of a railroad running upon Broadway, or upon streets parallel to Broadway. The proposition was made in

good faith, and any amount of security necessary to insure the promised result was placed before the Legislature, so that there could be no doubt of the fidelity of the proposition. The same proposition, I am assured, was before the Senate in 1858 and 1859, and two years after I left the Senate; and those two million dollars were to be placed in the city treasury.

Mr. FIELD—And two years ago it was before the Senate again.

Mr. E. BROOKS—These two millions of dollars were to go into the city treasury, as I have stated, and to contribute just so much to the diminution of taxes in that city, largely taxed as it is; yet, sir, in the face of this proposition, and in defiance of it, there were men in the Legislature and around the Legislature, who consented to give the franchise away without having one single cent paid in return. It was given; and I could put my hand upon some of those men who were then elevated to the highest places in the Legislature who notoriously were in the receipt of bribes for this corrupt legislation. And the same thing has happened from that time to the present. It is not [merely with regard to street railroads; because when you consider the developments made within a year past in regard to the New York Central railroad, and the testimony found upon the examination and revelations of the Committees on Railroads and Canals, and other committees of the two houses of the Legislature, it does not become us as representatives of the State to reflect too much upon the want of integrity of the local governments of cities and towns. We should rather refer to abuses where we know them so notoriously to exist. I am glad that this proposition is introduced. I hope it will be prosecuted so that nowhere in the Constitution of the State the Legislature shall have power in time to come, as it has had in times past, to commit such abuses as those to which I have alluded. The Legislature should be so controlled that it will be compelled to put up all city franchises at public auction. This done the effect will be, not as my friend from Clinton [Mr. Weed] proposes, to enlarge in any manner the expenses of railroad transportation but rather to keep them where they are, if not to secure lower fares than at present. This very proposition to which I have alluded guaranteed that all persons should be carried to and fro through the city of New York for the sum of not exceeding five cents for each passenger, and it might be, reduce the price even to a lower amount than this. This is the time, and this is the place, for gentlemen to vote for a proposition which will put an end to the evil to which I have alluded.

Mr. WEED—One word in reply to the gentleman from Fulton [Mr. Smith]. We are all driving at the same end, but simply believe that the way that the committee deem right to reach that end is not the proper one and will not reach it. The gentleman from Fulton [Mr. Smith] and the gentleman from Richmond [Mr. E. Brooks], refer to the action of the Legislature. Now I concur with those gentlemen in much that they have said with reference to it. For the past three years I have been a member of one body of that Legislature. I have no defense to make for it. That improper things are done in and around the halls of the

Legislature there can be no doubt; but the simple question comes here—is this going to remedy the evil? The question is through what channel are these improper influences to be reached. For one moment look at the facts; for the facts are stronger than any theories. Prior to 1860 the power to grant railway facilities in the city of New York resided in the common council. In 1860, a bill was passed depriving the city of this power and giving it to the Legislature. In 1860 and 1861 all these valuable franchises that the gentleman from New York [Mr. Opdyke] speaks of, and which other gentlemen have referred to, were granted, and from that time to this no valuable railway franchise has been granted in the city of New York. How can we account for it? Is it merely from the effect of these corrupt influences to which gentlemen have alluded?

Mr. E. BROOKS—Will the gentleman allow me to say that they have been granted by the Legislature over and over again, but they have failed to receive the executive approval, and it was no fault of the Legislature that they are not the law of the State.

Mr. WEED—I was coming to that in a moment. The great bulk of them were not granted at all. Some few, very few comparatively, have been granted, and the question comes up, why are they not laws? If it is proper that they should be—and all admit that railroad facilities are proper and are necessary—why have there been no statutes placed upon our statute books since 1860, when these franchises that were granted are worth ten millions to-day, more than they cost? There is but one answer to it. There can be but one answer to it; that if corrupt influences have been used they have been used by persons interested in those corporations to prevent the granting of others. If the city of New York had the railroad facilities which I believe they ought to have that ten millions of property would not be worth more than two perhaps, or five millions. Therefore you see that this section—circumscribed as it is by the committee—is perpetuating the power of these men who seem to have had the power to control either one or another branch of the Legislature, and to prevent grants of this kind. One word with reference to underground railroads. I believe there is no stronger advocate in this State than myself for underground railroads. I think it is a great system that will be a relief to the city of New York in the future, and if I had the power to-day, I would grant franchises to lay just as many underground railroads as could be laid in the city of New York; but it is a stupendous work, and it will take time. For three years they have attempted to get a charter from the Legislature, and nobody can pretend that it is a very valuable charter to those who build it, but they have been defeated. Who has defeated them each year? The first year it was vetoed by the Governor, and the next two they were defeated in one branch of the Legislature or the other. How have they been defeated? They have been defeated by a combination of two interests. First, the interest referred to by the gentleman from Richmond [Mr. E. Brooks]—men

coming here and offering to pay so much for franchises that they, in the same breath, said ought not to be granted, and which they would not build, and opposing the underground railroad; and again by the surface railroad. I say that this perpetuates that same power. This section leaves the right to lay an underground railroad, which I believe to be almost of national importance to this country—certainly of vital importance to the city of New York, to the board of aldermen and the common council of the city of New York. I say you are not remedying this difficulty at all. You are perpetuating the power of the men who, it is said, have corrupted the Legislature and prevented those bills for other roads than their own from being passed; but if the Convention think it is important that there should be a section of some kind, I believe there can be nothing but good results to follow from the amendment offered by myself. Some gentleman has suggested to me that that will leave the Legislature a right to increase the fare. I have no objection to allow an amendment to limit it, so that the Legislature shall have no power to increase the fare after the grant is made. I will go further and say that the section ought to be prepared with care, so as to provide in the Constitution that the proper authorities may take back these franchises and grant them to those who will carry at a lower rate of fare, if the fare is fixed too high.

Mr. VERPLANCK—The object of this section obviously, was to prevent this abuse of legislative action, by giving these franchises to build railroads in the city of New York to certain individuals named, to the exclusion of other parties, when the franchise is a valuable one, and one which, if put into the market, would bring a large amount of money. Now, it is undoubtedly true that, when the corporation shall have completed a railroad and incurred that expense—when they have paid a bounty for the franchise—they must charge a rate of fare which will make the whole investment a profitable one. Thus, they charge the amount paid for the franchise to the cost for construction, and they must get a rate of fare which will make it a paying road, or else it must be abandoned. There is, therefore, force in the suggestion of the gentleman from Clinton [Mr. Weed], that when you put these burdens upon a corporation you give them an excuse for charging and keeping up a high rate of fare. Again, if you adopt the suggestion of the gentleman from Clinton, and propose to sell these to the parties who will transport passengers at the lowest rate of fare, you run into this difficulty. The persons who undertake to transport the passengers at the lowest rate of fare, finding that it is a losing business, ask that the rate of fare may be increased, and if not allowed to increase it, they abandon the road. There is no power, and there can be none in the Legislature, nor in the State, to take the road track itself, the superstructure, and let it to some other person. It involves the entire destruction of the road and the consequent inconvenience of the people. If the object which the gentleman has in view could be effected, it would be desirable. It will turn out as it did in the city of Buffalo, where there was a contract with

two roads which were to charge five cents fare. They constructed the roads and found out that for some reason it was not a paying business. They came to the Legislature and asked to have the fare increased. There was at first much opposition to it in the city of Buffalo, but when it was ascertained that the roads were losing money, and that, unless the privilege was granted of raising the fare they would be obliged to abandon the roads and to take up the tracks, the objection was withdrawn and the Legislature gave them the power to increase their fare. I think it is right that a road should not be constructed in a city without the consent of the city authorities, which is the law now, and that it is perfectly proper that individuals owning property upon a street should have the right to refuse their assent. But if the proposed road will be a public convenience and it is essential to the highest good of the public, if the judges of the supreme court at general term, looking at the whole case say that it is so beneficial, it should be constructed though a majority of the owners shall not consent. I move to strike out from this article all after the word "provided" in the fifteenth line.

The CHAIRMAN—The Chair would inform the gentlemen from Erie [Mr. Verplanck] that an amendment is not now in order.

Mr. PRINDLE—I would like to call the attention of the gentleman from Cayuga [Mr. Rathbun] to one point. The section provides that the franchise shall be put up and sold to the highest bidder, but it does not say who shall bid for it. I should like to have the opinion of the gentleman upon that point. Is it intended to provide that any individual can bid for the franchise, or is it necessary to obtain the consent of the common council in order to bid? If nobody but those who can obtain the consent of the common council can bid, then the common council has the matter entirely in its own hands.

Mr. E. BROOKS called for a division of the question.

Mr. WEED—There seems to be some misunderstanding about the amendment. It simply strikes out that portion of it which provides that the sale of the road shall be to the highest bidder, and provides that it shall be sold to those who shall carry passengers at the lowest rate of fare.

Mr. E. BROOKS—I will ask the gentleman from Clinton [Mr. Weed], as he said he was willing to accept an amendment, if he will assent to the addition of the words "which fare shall not be increased."

Mr. WEED—I have no objection to that amendment.

Mr. E. BROOKS withdrew his call for a division of the question.

The question was put upon the amendment offered by Mr. Weed, and, on a division, it was declared carried, yeas 45, noes not counted.

Mr. COOKE—Before a vote is taken upon the motion to strike out the section I wish to call the attention of the chairman of the committee to the language of the seventh line, with a view to a motion to strike it out. It requires the consent of the owners of at least one-half in value of the

property on the line of the streets through or over which the same shall be constructed. As I understand this language, suppose a railroad across town, in the city of New York, to be in the neighborhood of Thirty-fourth street. It goes from the North river up to Broadway; then it traces Broadway one block, and so across to the East river. Before the railroad can be laid there, according to the terms of this section, it is necessary to get the consent of the owners of the property through the whole line of Broadway. I propose to strike out the words "of the streets," and to insert in lieu thereof the words "thereof or," so that it will read "the property on the line thereof, or through or over which the same shall be constructed." In that case it will only require the consent of the owners of property through or over which the road passes.

Mr. RATHBUN—The language of this section is intended to be precisely as the gentleman proposes to make it. The words "one-half in value of the property on the line of streets through"—that is, the street in which the road runs—"or over which"—which means upon the surface of the street through which it runs, and not merely because it crosses a street. It does not run in Broadway if it crosses Broadway. It runs in a street or upon a street crossing Broadway, and the consent to be obtained would be the consent of the persons upon the street upon which it ran, and not upon Broadway.

Mr. COOKE—In the case that he supposes they would go one block upon Broadway, from Thirty-fourth street down to Thirty-third, and then across. I presume that the intention of the committee was to only require the consent of the owners of the property over which the road passes. The only question is whether this section exactly expresses that idea, or whether it leaves it a little vague and uncertain.

Mr. RUMSEY—Does the gentleman propose to strike out the words "of the streets"?

Mr. COOKE—Yes, sir. It is not necessary to put any thing in the place of them.

Mr. VEEDER—I desire to call the attention of the committee to the fact that if you change this section in this way, and if the railroad corporation desire to build a railroad upon Broadway from the Astor House to Fourteenth street, all they have to do is to continue their line far enough beyond that to counteract the value of the property upon that portion of the road, and not get the consent of a single property holder upon Broadway, provided they get the consent of a majority in value of the property on the line of the whole route. They might not get the consent of a single holder of property in Broadway, but get the consent of the owners of the property beyond that, sufficient to counteract the value of the property in Broadway.

Mr. CONGER—I think the amendment proposed by the gentleman from Ulster [Mr. Cooke] covers, also, another case. It has been proposed already, and may be designed in the future, to construct three tiers of railroad where the line of the road would not go through any street, but would go through blocks of houses. Of course, in such a case as that, the owners should be protected with far more care than in the case of persons residing

upon the street through which a road may be projected. I hope the amendment will be adopted.

The question was put upon the motion offered by Mr. Cooke to strike out the words "of the streets," and, on a division, it was declared carried, ayes 43, noes not counted.

Mr. E. BROOKS—I have an amendment which I wish to offer to the sixth line, so as to obviate the very important difficulty suggested by the gentleman from Kings [Mr. Veeder], to insert the words "each of," so that it shall read "one-half in value of the property on the line of each of the streets."

The CHAIRMAN—The words "of the streets" have been stricken out.

Mr. E. BROOKS—Then I hope the Convention will reconsider the amendment which has been just adopted, and for this reason, which has been well expressed by the gentleman from Kings [Mr. Veeder]. Suppose the Harlem railroad had had the right, as they supposed, to build a road through Broadway, as a part of their own road, which now extends down through the Bowery to the City Hall, the idea being that, under their general grant from the Legislature, they could build that road upon obtaining permission from the city government.

Mr. RUMSEY—Will the gentleman allow me to suggest to him that he will attain his object by making it read, at the end of the sixth line, "of that portion of each street through or over which it will run."

Mr. E. BROOKS—If that will cover the precise streets, that is what I want.

Mr. RUMSEY—That will cover the portion of each street.

Mr. E. BROOKS—Then, instead of the motion to reconsider, I move this as an amendment.

Mr. COOKE—I suggest that that will not answer the object. The road may run through or across a man's lot, and not through a street; and this makes no provision for obtaining his consent, but only the consent of owners of property upon the streets.

The question was put on the amendment offered by Mr. E. Brooks, and it was declared carried.

Mr. DUGANNE moved to amend by inserting the words "for a certain term of years," in line seventeen, after the words "highest bidder."

Mr. VERPLANCK—That is hardly worth while as the section now stands. It is to be let to the person who will carry passengers at the lowest rate, and not to the person who shall pay the most for the franchise. We do not want to limit the number of years.

Mr. DUGANNE—They may take passengers at the lowest rates and give the poorest accommodation.

Mr. VERPLANCK—That is another question, and your amendment does not meet that.

The amendment was withdrawn.

The question was put upon the amendment offered by Mr. Prindle, as to railroads constructed or operated "wholly or principally" within cities or incorporated villages, and it was declared lost.

Mr. CONGER—As the committee have virtually reconsidered the proposition made by the gentleman from Ulster [Mr. Cooke] to strike out the

word "streets," I will now move, in order to cover the case which I presented, to insert after the word "streets" the words "or the property." As the section now reads, the consent of owners is only to be obtained when the road runs through a street; and if a scheme is got up, as there was last winter, to go right through the center of the blocks, from Fifty-second street all the way down to the Washington parade ground, there would be no inhibition in that, unless you make the "line" to cover not only the line of the street but the line of the property that is to be taken. I supposed the former amendment was sufficiently ample to cover both cases; but as it now stands, it becomes necessary to move a separate amendment.

Mr. BICKFORD—Could that be considered as a street railroad—to run through a block?

Mr. CONGER—Certainly; it would be a new street, for all practical purposes. I do not know how you can distinguish between a street railroad and an ordinary railroad, except that one is operated by steam and the other by horse-power, or that one is constructed with one kind of rail, and the other with another kind of rail.

Mr. S. TOWNSEND—Railroads in the city are now operated by steam.

Mr. CONGER—Some are. I hope the committee will not undertake to protect property along the streets, and leave unprotected the property through which the road is to pass, when it is to go right through the houses, as has been proposed, which would be a far greater damage to the owners than merely running the railroad through the street.

Mr. RATHBUN—The objection raised by the gentleman from Rockland [Mr. Conger] is not well founded, if I apprehend it, as in the case of the public streets the public have an interest there in their corporate capacity; but the moment you go outside of the street, and come in contact with individual property, then the law and the Constitution provide all the safeguards that are necessary. That cannot be taken under any circumstances for public use without adequate compensation. That is all provided for. When the road departs from the line of the road or street, that moment you come in contact with other principles, both constitutional and legal, which compel the parties to apply to the courts for the appointment of appraisers, and to go through the ordinary form of laying out railroads, and they are to make the payment for damages before they can enter upon or take the land. This provision is entirely in regard to street railroads, not invading the private property of any body; because the Constitution stands and bars the corporation from interfering with private property without making just compensation therefor.

Mr. DUGANNE—That is the very thing we want to avoid. They claim that they can enter upon this property by paying compensation; but what can compensate a man for the breaking up of his whole household, and the sacred images of his residence? You cannot say what amount of money shall compensate him. And very often it is left to appraisers who make the compensating award extremely small. I think that it should be expressly provided in the Constitution that no

property shall be entered without the consent of the owner, unless it is for some State or national purpose.

Mr. RATHBUN—That has been provided for from the beginning of railroads, and it is provided for now. No railroad company can invade a man's house, or barn, or farm, or land anywhere in the State without making compensation for it. I trust that the people in the cities and villages are the last people in the world to permit their houses and lands to be invaded without teaching the railroad corporations that it is a very expensive matter, and they had better find some other route. The whole thing is utterly impracticable. It could not be done so that any man or body of men could construct this railroad at all. The man who undertakes, in New York city, to go through the buildings on a line parallel with Broadway, or over the buildings, if the property is appraised by the intelligent judgment of honest men, would have to pay more than the railroad would get in ten thousand years. No security of that kind is required.

Mr. DUGANNE—And yet, sir, the fear of such a measure, during the last winter, led to a large expenditure of money on the part of property holders in order to prevent the passage of such a bill, for a road to go through private property in the city of New York.

Mr. CONGER—The answer which the gentleman from Cayuga [Mr. Rathbun] has given, is based upon general considerations in regard to the streets in the city of New York being public property. I admit that that is so with regard to the great majority of the streets; but there are many of the older streets which do not come within the designation as I think the gentleman has laid it down. But the ground upon which I put this amendment as necessary is that if you propose to prevent the taking of the property in the street for the purpose of a railroad without getting a certain consent or certain authority in the first instance, and I wish to know whether you would not impose the necessity for the same authority or consent before you allow a street railroad to be run through a continuous series of blocks of houses.

Mr. RATHBUN—Will the gentleman give way for a suggestion? A street is regarded as a public property in cities, and the use of it for a railroad has been and is regarded now by a large portion of the people as objectionable, as relates to the property holders on that street. They cannot be used under this provision without the consent of those owners, or without the consent, upon application, of the court in lieu of that consent. But when you come to a man's individual property, you must not only obtain the consent of every man, but pay him damages. That is another thing, and is provided for in the general laws.

Mr. CONGER—I understand that fully. The question of compensation comes afterward. But I cannot conceive why we should allow a project of this kind to be entertained in the first instance, upon the penalty merely that the party who undertakes to carry out the franchise shall comply with certain other requirements of the Constitution as to the value of the property.

The hour of two having arrived the PRESIDENT resumed the chair in Convention, and the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock when proceedings were resumed.

The PRESIDENT—The Chair asks leave to submit the following correspondence between the Comptroller and the President of the Commercial National Bank of Albany.

The SECRETARY proceeded to read the correspondence as follows:

STATE OF NEW YORK, }
COMPTROLLER'S OFFICE, }
ALBANY, Nov. 13, 1867. }

EZRA P. PRENTICE, Esq., President, etc.

DEAR SIR:—The time fixed in the act of the Legislature of this State for a submission of the Constitution to the popular vote, having expired, I am advised by the Attorney-General that I cannot legally continue to pay the per diem of the members and officers, and other expenses of the Convention.

Wishing to do every thing in my power to facilitate the completion of the important work in which the Convention is engaged, I write to ask if your institution will not pay the members and officers on the presentation of the usual certificates of service signed by the President, relying upon the Legislature soon to convene, to sanction such payment when the proper warrants can be drawn on the treasury. I shall recommend such action in my report, and have no hesitation in expressing the opinion that the necessary authority will be granted.

Very respectfully yours,

[Signed] THOS. HILLHOUSE,
Comptroller.

NATIONAL COMMERCIAL BANK, }
ALBANY, Nov. 13th, 1867. }

Hon. THOMAS HILLHOUSE, Comptroller.

MY DEAR SIR:—In reply to your communication of this date, asking this bank to advance such sums as may be necessary to meet the expenses of the Constitutional Convention, now in session, in anticipation of legislative appropriation, I have to reply that I am instructed by the Finance Committee to make such advances on interest, in the confident assurance that such legislation will not be wanting.

Yours respectfully,

[Signed] J. MARTIN,
Cashier.

Mr. ALVORD—I move that the proposition on the part of the Commercial National Bank be accepted by this Convention.

Mr. WEED—I do not understand that it is a proposition. I understand it is simply a correspondence between the Comptroller and the Commercial National Bank.

The PRESIDENT—The Chair will state for the information of the gentleman from Clinton [Mr. Weed] that the Comptroller desires that the proposition shall be accepted on the part of the Convention.

The question was then put on the motion of Mr. Alvord, and it was declared carried.

The Convention again resolved itself into Committee of the Whole, upon the report of the Committee on the Powers and Duties of the Legislature, Mr. ANDREWS, of Oneida, in the Chair.

The CHAIRMAN announced the pending amendment to be on the amendment of Mr. Conger, to insert after the word "streets" in the seventh line, the words "or of the property."

Mr. CONGER—I find that the design of the amendment as I intended has been misapprehended. So far from desiring to authorize the running of the railroads in any way through blocks of buildings as reported in one of the evening papers, my desire was to prevent it. But as the subject is attended with great difficulties, I will, after consultation with the chairman of the committee, withdraw my amendment.

There being no objection, the amendment was withdrawn.

The question recurred on the motion of Mr. Veeder, to strike out the entire section.

Mr. McDONALD—I wish to move to reinsert the portion stricken out on the motion of the gentleman from Clinton [Mr. Weed]

Mr. WEED—I rise to a point of order.

The CHAIRMAN—The gentleman will please state his point of order.

Mr. WEED—Such a motion is not in order.

The CHAIRMAN—The Chair is of opinion that the point of order is well taken.

Mr. McDONALD—I do not propose to strike out what was inserted on the gentleman's motion. I propose to put in what was stricken out. I understand that to be a different motion. The object of it is this; that the Legislature shall be compelled to do one of two things; either to grant it to the highest bidder, or to grant it to the person who will carry passengers for the lowest fare and leave it to their discretion. That is a very different proposition.

Mr. WEED—If the gentleman will allow me. I do not understand, as the section reads, that the Legislature has any thing to do with it whatever. It is expressly taken from the Legislature; it has no power over it; it has nothing to do with it. There would be nobody to elect. If left so it would amount to nothing.

The CHAIRMAN—The Chair is of opinion that the motion to reinsert is not in order. If the gentleman desires to reach the result he seeks he must move for a reconsideration.

Mr. McDONALD—Then I make that motion to reconsider, for the purpose of reinserting what has been stricken out, leaving in what has been put in. And the reason for my motion is this: as far as I am concerned, if I was now compelled to choose between the two methods I should do as I have done in voting for the motion of the gentleman from Clinton [Mr. Weed]. I voted for that motion, but at the same time that I voted for the motion I found opposed to me gentlemen of the Convention who were far better acquainted with city railroads than I am. With regard to that, I am satisfied that one of two things ought to be done. Either the railroad should be sold to the highest bidder, or it ought to be sold to persons who will carry for the lowest fare. As to

which of these two modes should be adopted, I submit that this Convention is not now prepared to decide. I therefore make this motion, so that the object will be carried out, and railroad franchises will be let to the highest bidder, or to the person who will take passengers at the lowest fare, and leave the question of which ought to be done to the Legislature. As I understand they still have the control of the subject under this section, or to whatever power has control of it.

Mr. VAN CAMPEN—I am opposed to this whole section, both as originally proposed and as amended. I believe that any person who has taken the trouble to inquire into the condition of the city railroads, especially those in the city of New York, and the amount of capital invested, and the great interests that are involved in these roads, and who has known the desire of parties who own the capital in these roads, must be satisfied that they desire no better proposition for the benefit of themselves than a proposition cutting off all future improvement, or a proposition hindering improvements that may be necessary in the future growth of the city. No proposition could be introduced which would more effectually serve their interests, than a provision preventing future improvements. My knowledge of the city of New York shows to me unquestionably that an underground railroad is the only practicable means of relief, taking into consideration the construction of that island, it being a mile or two wide and thirteen miles long. The necessities growing out of its position indicate at once the importance and necessity of an underground railroad. It is the only practicable mode of relief. If you put this provision into the Constitution, the parties now holding franchises in that city can so manage the proposed article as to prevent any future improvement in New York city. It is the very height of folly, however well intended by the gentleman who introduced it, to put such a provision in this Constitution. No greater folly could be perpetrated by this Convention than to introduce such a proposition. It is the duty of this Convention, as well as the people of the State, to leave the subject just where it is. Allow capitalists and parties interested in New York to come to the Legislature and obtain a charter for an underground railroad and construct it. It is a matter that will require an expenditure of a large amount of money—twenty or thirty millions of dollars, to tunnel and construct such a railroad as they want. Any gentleman who has examined these roads in London, and wherever they have been constructed, or who has been upon these roads as I have been myself, knows their importance and necessity, and would agree with me that it is the only mode of relief for New York city. I, therefore, am opposed to the insertion of the entire proposition of the chairman of that committee.

Mr. ALVORD—There is one thing that puzzles me very much indeed. I have not heard a single individual who has addressed the committee upon the subject, who is opposed to this proposition upon the ground that it will leave the power in the hands of the present owners of railroad franchises, who does not acknowledge,

in the same breath, that these franchises have been obtained by corruption or fraud against the interests of individuals, and that corporations are now laboring for the continuance of the same state of things, to keep to themselves the benefits and advantage of that wrong upon the people; and that the men who procured those franchises are in favor of passing something of this kind. It is the strangest argument I ever heard in my life. It seems to me we will really leave in the hands of those men who have these franchises as much power as they have now. They can come here and block the wheels of legislation constantly, as they have done in the past, in reference to the extension of these franchises, or the accumulation of them in New York. They are the parties who have produced the evils that are complained of; they have originated these things before the Legislature, and they will keep it up for all time to come. My proposition is that, if we are convinced (and I have no doubt of it in my own mind) that these men have stolen these franchises, we should put a stop in the future to the same operation.

Mr. VEEDER—I think the gentleman from Onondaga [Mr. Alvord] must misunderstand the proposition before the committee. If the gentleman will refer to the last section—section 28—he will find that it is there expressly provided that the Legislature shall not, in the future, grant to any individual, association or corporation the right to build a railway in any street, taking from the Legislature the power they have been exercising, as the gentleman says, so corruptly for years past in granting franchises to individuals and corporations to lay and operate railroads in the city of New York and other cities in the State. There is ample provision made there, if that section prevails as it was adopted by the committee, and becomes a part of the Constitution of this State. The right and power to grant franchises and license corporations to lay rails in a city returns, as a matter of course, to the city authorities. There can be no question about it. If that provision prevails, prohibiting the Legislature from exercising this authority, which they have exercised since the statute of 1860, when an act was passed, providing that no railroads should be built in New York except under the express authority of the Legislature, the Legislature is relieved from its difficulty, and this talk about "blocking the wheels of legislation" is disposed of. It returns right back to the local authorities, to the local government, who will license corporations and individuals to lay rails and operate railroads, the same as they license stage companies and hacks and other enterprises that may be carried on in the city. I cannot see, for the life of me, the consistency of some remarks that have been made. You talk about putting up these franchises and selling them to parties who will operate the road for the lowest rate of fare. The fare cannot be much below five cents and pay for the running of the road. Suppose there are four or five different parties desirous of taking a franchise that may be for sale, and carry passengers for four cents from one end of the city to the other, to whom will you award the contract? The road shall be sold to the highest

bidder—that is the proposition. After parties have gone to the expense of having surveys made and calculated the expense of establishing a road, and have gone before the authorities and obtained a franchise and a right to lay a track, after they have accomplished all this, they are required to have that franchise put up at auction and sold to the highest bidder. I am at a loss to imagine what would be the effect of this section. If, on the contrary, it is left entirely to the local authorities, as it will be, if this last section prevails, it takes from the Legislature the power to grant these franchises, and the whole object sought will be accomplished.

Mr. ALVORD—I thank the gentleman from Kings [Mr. Veeder] for the argument he has given. If his proposition is correct, then, most certainly, we desire the passage of this very section, for the purpose of making it imperative upon the part of the common council to go in a single line in New York, and not have power without any sort of restriction whatever to do as they may please with this franchise; that the common council shall move in a single, straight path, both so far as regards the rights of individual property holders, and the rights of parties desiring franchises. They have no discretion. If, in the first place, they come to the conclusion that a railroad shall be laid out in a certain street, they cannot give it to their particular friends to the injury and damage of others. Neither can they give it to their particular friends, to the injury and damage of property holders, who do not desire it. If, as he says, the power is to revert to these local authorities, most certainly I would restrict and control them in the way in which they should exercise that power. I thank him for the argument. It seems to me to make it still stronger, if his view of the case is correct, that we should frame the section so as to say that this common council shall not have entire power over the property and the rights of the people of any locality.

Mr. M. I. TOWNSEND—I find myself in a situation, in which, it seems that, in my interpretation of the constitutional provision contained in the article before us, I am compelled to differ both from my friend from Onondaga [Mr. Alvord] and my friend from Kings [Mr. Veeder]. It seems to me there is no great difficulty in ascertaining where we are in regard to this matter; and unless I am entirely mistaken, we can find with the line and plummet the depth of this sea of water. Suppose this twenty-third section to be stricken out—I wish to test it for a moment, and see whether the gentleman from Kings [Mr. Veeder] is correct in his interpretation. If the twenty-third section be stricken out and the twenty-eighth section remain, I draw the inference that the Legislature shall provide by general and not by special law, for the locating of railways in the streets of cities; but that, under the implications contained in the introduction to the twenty-eighth section, and in the ninth and tenth and eleventh lines of that section, they shall not pass any special laws granting to any individual, association, or corporations the right to lay down railroad tracks in any locality within this State. Of course it is implied that they may by general law.

Mr. CONGER—If the gentleman will allow me

I will suggest that he will find that in the seventeenth, eighteenth and nineteenth lines of the tenth page, it is expressly provided that the Legislature shall pass general laws.

Mr. M. I. TOWNSEND—Yes, it is provided that they shall pass general laws on the tenth page. They shall make provisions for laying down these rails, and locating these railroads by general laws.

Mr. VEEDER—If the gentleman from Rensselaer [Mr. M. I. Townsend] will allow me, I will make a single suggestion. The last clause providing for the passage of general laws is precisely as it stands to-day. In any city except the city of New York you can organize under the general railroad law a railroad corporation for the purpose of operating such a railroad, but you have to go to the city authorities to get power to run over the streets. To organize a corporation in any city of the State you have to go to the city authorities and obtain the right.

Mr. M. I. TOWNSEND—That comes to be the fact from the force of the present railroad law, and not by force of the Constitution. When this constitutional provision contained in the twenty-eighth section, is adopted, you have to come to this Legislature which is so "reeking with corruption." My friend from Cayuga [Mr. Rathbun], with all his horror of legislative corruption, has provided for coming to the Legislature and having them pass general laws upon the subject of railway corporations.

Mr. RATHBUN—Have I ever charged the Legislature with being corrupt?

Mr. M. I. TOWNSEND—I beg the gentleman's pardon; he is the last one in the world to say any thing about it.

Mr. RATHBUN—The gentleman will recollect I have never made that charge. I said they have been charged with corruption; but I never made the charge in my life.

Mr. M. I. TOWNSEND—I take it all back. I was entirely mistaken. I do not think the words "legislative corruption" have fallen from the lips of the gentleman since he assumed his seat in this Convention.

Mr. RATHBUN—You are mistaken about that. I say others have said so. I know nothing about it, and never did.

Mr. M. I. TOWNSEND—My friend will pardon me; but I have his whole lecture in my mind, as well to-day as the night he gave it to us, when we did not determine to elect Senators as he thought we should. Now, we have come to this Legislature; the State of New York is to have this Legislature pass general laws on the subject of railroads. They have to pass general laws upon the subject of street railroads. You cannot organize one under this Constitution, when it goes into operation, without coming to the Legislature, which is so corrupt. Now having provided that we must come, to procure the passage of general laws, the gentleman from Kings [Mr. Veeder], it seems to me, is entirely mistaken, that the whole thing is in the hands of corporations. I differ from my friend from Kings, and I differ entirely from my friend from Onondaga [Mr. Alvord] upon the effect of the proposition. I cannot see any good in putting in this provision, after you pro-

vide that this law must be passed by the Legislature. I cannot see any benefit from putting in these restrictions, except, first, to throw obstructions in the way of improvements; and, second, by throwing obstructions in the way of improvement, to aid those who already possess the monopoly. I wish my friend from Onondaga [Mr. Alvord] would explain a little more fully, because it pains me to differ from him, for I have the profoundest respect for his general notions of legislation. I cannot see how we are not directly promoting the interest and filling the pockets of the men whom he says are charged with having come here and bribed the Legislature to grant them undue privileges, and throwing obstructions, by constitutional provisions, in the way of any body building a road in competition with them. Now, one of two things is true; these railways are public benefits, or they are not. If street railways are public benefits, we ought not unnecessarily to obstruct their being built. If street railways are not public benefits, we ought to say so. If we do not mean to have any more railways built in New York, if we mean to suffer that population to go on increasing, and our accommodations for moving them from one part of a city to another are not increasing, we ought to say so directly, and not say so half way—not contrive to throw obstructions in the way. I do not know what necessity there is, after general laws are passed by the Legislature, in going to a common council which can be bribed, if there is such a thing as a corrupt common council, and I would not charge it upon New York. Wherein is the public interest to be benefited? This Legislature, as I have shown, in your own act, is to pass a general law; why throw any more obstructions in the way? Why create at least three tribunals, that may possibly be approached with money, unless it be first with the intention of preventing any more railways from being built; second, with the intention of aiding, as far as in us lies, those who have unjustly been possessed of monopolies, in their resistance to competition. For myself, and I have no hesitation in saying it, I would aid the building of every underground railroad that men would undertake to build, with proper security that the city should not be injured. I would aid in the construction of every surface railroad that men would build without unnecessary injury to the State. I believe they are public improvements, and such an improvement as cannot well be gotten along without. I concur, as I said to-day, with the gentleman from Clinton [Mr. Weed], and also with the gentleman from Cattaraugus [Mr. Van Campen], that the whole provisions of this section can be productive of nothing but mischief. But it is rendered still more productive of mischief by the provision which during the forenoon was added to the bill. Now, as the bill stood at one time, it provided that all the consent from the owners of the property that it was necessary to obtain was that of a certain proportion of those living along the whole line of the road. If the road, for instance, was to be built from Harlem to the Battery, the consent of the majority of property holders along the whole line was all that was necessary. But, as we have now amended it, as if

with the design of throwing every possible obstruction in the way of building a road, they have made this provision—that if the road runs down a long street to a certain point where it has to cross a single block of buildings, and then be extended through one of the other streets down to the Battery, the whole enterprise may be thwarted by the failure to get a proper proportion of the property holders in that little block to give their assent to the building of the road through that block. The projectors of the enterprise would have nothing to do but to buy, perhaps, fifty thousand dollars' worth of property, or give up an enterprise of probably a half million of dollars. I think there is an obstruction in the section from beginning to end.

Mr. WAKEMAN—For one, sir, I am unable to discover where the obstructions are. Let us look at this section for a few moments and see what it is. First, the Legislature have to pass general laws to apply to the city of New York and to other cities alike. What next? The consent of a majority of the property holders along the route is to be obtained. Now, take the very point that the gentleman from Rensselaer [Mr. M. I. Townsend] has raised. Suppose that some of these monopolists should purchase on a given street property, with the intention of subverting or obstructing the whole scheme of laying a track there; why, all the company have to do then, is to apply to the supreme court of the city of New York, at general term, for consent to the building of the road, and if it turns out that the object of the parties who have purchased this property is to subvert or obstruct the building of the road, why I take it that the court will do what is right in the matter and will grant the right to build the contemplated road. Now, what point has been raised by the gentleman from Ontario [Mr. McDonald], and also by the gentleman from Kings [Mr. Veeder]? The gentleman from Ontario says he desires that the franchises shall be sold at auction either to the lowest bidder as to fare or to the highest as to the amount of money to be given for the right. Why so? Is it not perfectly competent for A or B or any association, to say "we will give one million of dollars for that franchise and we will carry passengers for five cents." Is not that competent and proper enough? Is the matter not open to every one to enter into it to prevent a combination of monopolists for the purpose of obstructing the enterprise? And why not do this? The city treasury will receive from one to five millions of dollars if the franchise is worth it. If the people who ride on the railroad can have the fare at five cents, or some other small sum, why not have it? This provision, as I understand it, puts an end to monopoly altogether, and the thing is open to every body, so that people outside of the city can go there with their capital and compete, if they please. A good deal has been said during the session of this Convention with reference to corruption in the Legislature. Some gentlemen claim that it has been mooted and charged, and others that it has been rumored, and others say that they do not know whether it is true or not. Now, I will tell you what I do know. I do know very well that after this State

had expended a large amount of money in a commission to examine the exterior lines of the bulkheads of the city of New York, in which examination the general government furnished a corps of engineers and a vessel to survey those exterior lines—I do know full well that when, in the session of 1867, after the bill had been matured by the commissioners, such men as George W. Patterson, John L. Talcott, Mr. Vanderbilt and others—after it had been matured and based upon actual surveys, with a view to saving the navigation of the Hudson river from being obstructed, and after the bill had passed the Senate and had come down into this chamber—as chairman of the Committee on Commerce and Navigation, I saw this—I did not see any direct appliances of corruption, but I found that I could not get a meeting of my committee at all to report the bill, and, after repeated trials, I said to them, "Make a majority report against it if you like, but make a report of some kind. I will make a minority report, and then I will appeal to the members of the Legislature to see whether or not they will sustain your report." Even up to the last hour I could not get the committee together. Now, what was the reason of it? I do not know. I did not see any body offer any money or any thing of that kind. How did I get my report before the Legislature? I will tell you. I drew up the report and went to the committee individually and got two of them to sign it with me. So I reported it. Now, I say that there were some appliances of some most extraordinary kind brought to bear in that case. And when the bill was reported it took all the power of those who favored it in the Assembly chamber to carry it through, and they took hold of it in good earnest, fearful that the whole scheme would fall by some outside influences, for every one could understand that it was a matter of great importance that the navigation of the Hudson river should not be obstructed. Now, if appliances of that kind can be brought to bear in such a case as that, and have been brought to bear heretofore, they can be brought to bear again. Therefore, I say, give the cities power to construct their own railroads, and make the local governments responsible. I can see no objection to allowing the franchises to be sold and the money to be put into the city treasury for the benefit of the city; nor to the other proposition to reduce the fare to the lowest possible point, so that every individual shall thereby be benefited. It seems to me that if any thing has been guarded properly, it is this section of this article that has been matured here.

Mr. MILLER—I am very anxious to give an honest and intelligent vote upon this question. I think it a very important question, one of the most important that has come before us; but notwithstanding my great confidence in the chairman of the committee, and in the committee that have reported this section, I still have some doubts about the wisdom and propriety of it as a measure to prevent improper and corrupt obstruction to the building of necessary railroads. As I understand this question, Mr. Chairman, there have been very great objections, very great complaints, that improper and corrupt influences have

been used in the Legislature not only to secure the passage of railroad bills, but also to prevent the passage of railroad bills. Now, it seems to me that if we adopt this twenty-third section, we will place the individuals who hold present franchises in a position of very great advantage, and one which if they are disposed to use it they can successfully use to thwart the building of any more rival railroads. We require in the first place that the Legislature shall pass a general law. So much for the Legislature. These monopolies can use their influence with the Legislature; but the trouble to my mind is, that by this twenty-third section the consent of the local authorities is required, and the want of such consent completely blocks the whole project. Now can any man believe that the virtue and integrity of the common council of New York is so much superior to that of a legislative body that these roads, representing ten millions of dollars in property, cannot do much to prevent the giving of such consent? Am I wrong in thinking that this consent is required? I think that it is absolutely necessary, and that if we adopt this section we put it into the power of these men who hold present franchises, to do what I have suggested, and indeed by these means we make a double system of corruption, one at Albany and the other in the common council of the city. And for what purpose? Are the common council of the city of New York any better guardians of the rights of citizens and of property than the Legislature? I think not. So far as the consent of the property holders is concerned, I would object very strenuously to that being required if it was to be conclusive and final; but I admit that the objection to that portion is not so strong, because parties seeking the franchises can go to the supreme court. In my opinion, Mr. Chairman, the amendment which we have adopted, originating with the gentleman from Clinton [Mr. Weed], is the better part of the section, for I do not believe that the selling of these franchises will really be of any advantage to the people of the city. I think the proposition to dispose of them to those who will carry passengers at the lowest rate of fare, is much the most just and reasonable. If you demand a large money consideration, then you will have to have a high rate of fare, and the men who purchase those franchises by giving a large money consideration will have an equitable claim to maintain that high rate of fare forever. In my opinion, too, in taking this large sum of money, you substantially make the poor, as has already been stated—and we know it is the poor who chiefly patronize the street rail car, because it is the poor man's carriage—you make the poor pay the additional tax, and that is all you gain by it. If, however, you sell to the bidder who will carry passengers at the lowest rate of fare, then so far as benefit accrues at all, it accrues to the people who most need such benefit. But I confess for myself that I do not see, unless it is further explained to me, enough of value in the section to make it worth saving. I think the objections to it are stronger than all the commendations I have yet heard in its favor.

Mr. RATHBUN—I do not desire to add anything by way of argument to what has been said in support of the proposition; but to explain in some measure what seems to be a misapprehension on the part of the Convention or of many of the gentlemen who are opposed to this proposition. It is treated as though it were a proposition confined to its operation to the city of New York. Now, there is no such design, no such language, no such intent. The section is general, and applies to all the cities and villages of the State. The application to the city of New York is precisely like the application to the city of Albany, or to any village in the neighborhood of Albany or elsewhere in the State, where they desire a street railroad. It cannot be denied that somebody somewhere must have a right to determine as to the location of a road of this kind, and as to the person who may apply for the privilege of building the road. You can have but one body intrusted with the power of granting such privilege. You can have properly but one railroad running in the same street, and the question is, who shall have the right to designate the street to be occupied and the person or persons who shall occupy it for these must be designated by somebody. So the question with us was, where shall the authority to dispose of these matters be located? Gentlemen from New York city, and from all parts of the State pretty much, are complaining of the interference of the Legislature with the internal affairs of cities, and particularly of the city of New York, and one gentleman very much opposed to this proposition has been very eloquent in regard to the manner in which New York and Brooklyn have been treated by the Legislature of the State, which has appointed commissioners to go there to control and manage the government of those cities, at the expense of the cities. There has been complaint made that in 1860, the Legislature assumed the right to say who should build railroads in New York city, and where they should be built, and that the city authorities were deprived of the right to do or say any thing on that subject. That has been the complaint all along, and it is the complaint now. What do we propose? Why, to accommodate the people of New York, and the people of other cities and villages that desire the construction of street railroads, and to intrust the power of locating such railroads, to the persons elected by those people to manage their own affairs. But it is said that the corporate authorities of the city of New York are so corrupt, that you will have to buy your way through the common council, if you want to build a road. Now, I ask gentlemen from the country, what business is that of yours? What have you to do with that matter? The people of the city of New York elect their mayor and common council, and we have a right to presume that they are honest men and fit to be trusted; and I deny the right of the gentleman from Rensselaer [Mr. M. I. Townsend], or any other gentleman from any county in the interior of the State to stand up here, and defend the people of the city of New York against their own officers, whom they themselves have elected. It is for the people of the cities to decide this

matter. The simple question is, shall the power to authorize the building of street railroads in New York and other places be intrusted to the authorities of the cities elected by the people, or shall it be confined to the Legislature, and shall they alone have power to exercise supreme control over all the cities and villages of the State in such manner as they see fit. Now, what have the Legislature to do with the interests of New York city, and what do they know about them? What does this Convention know about the propriety of establishing a railroad in a certain street in New York city; about where any particular road should be or who should have the privilege of building it. Why, any body can see that if the people of the city of New York are entitled to be intrusted at all with their own business, they know better than we do, and they have a right to determine for themselves these questions. There may be bribery and corruption there. That is a matter that I neither admit nor deny. I know that charges have been made in regard to corruption there, and that is all; but I do not know that those charges are true, and if the flood of corruption which it is said is constantly ascending the Hudson from New York during our legislative sessions really exists, it is best for us, and for the State, that it should be stopped and kept at home, and prevented from setting back into the country. Keep it in New York if it is there. Let the people of New York take care of their own affairs, but do not intrust this power to the Legislature, and thus have steamboats and railroads loaded with men and money coming up here to obtain bills and to defeat bills pending in the Legislature. We do not want the corruption of New York here. We have had enough of it, if the charges that are made are true. Let the people of New York do as the people of other places do—elect their own officers, manage their own affairs, and take the responsibility, and if they cannot get along without bribery and corruption, why, it is their own fault and misfortune, they have the money to pay. Let them take charge of this thing, and take the consequences of it. Let them do their own business, and establish their own horse railroads.

Mr. WEED—I merely wish to say that I have been regaled by the best democratic speech I have heard from a republican for a long time; a speech which would have turned the gentleman [Mr. Rathbun] out of the republican party if he had been in the Legislature at any time during the last three years.

Mr. RATHBUN—I was not there. [Laughter.]

Mr. WEED—I am happy to know that the gentleman is democratic in his views in relation to city government, and trust that the last election has converted more to the same views. The pending question, as I understand it, is on the motion of the gentleman from Ontario [Mr. McDonald], to reconsider the motion made by myself, and upon that I desire to say a few words. It seems to me that it is important to prevent the operation of "rings" in New York, of which so much is said, that there should be no large sum to be paid for any of these franchises, so that men of moderate capital may get together

and build these roads if they choose, because it costs very little to build such a road. According to common report they can be built with money raised by mortgages upon them, so that men with limited capital may build such a road, and run it at a profit, and at the same time at a low rate of fare. Such men, however, under the section as it stood originally, or as proposed to be amended by the gentleman from Ontario [Mr. McDonald], could not come in at all, because they would be unable to raise the bonds which would be required, while those large capitalists in the city, who are interested in existing roads, could raise five hundred thousand dollars, or a million dollars—could fix their own terms at so high a figure that men of moderate capital could not compete with them at all. It is safer for the interests of the people of the city of New York that this should not be left so that a large sum of money would be able to control the franchise; and for that reason I think that the amendment offered by myself is much better than the other.

Mr. FERRY—I wish to say a few words in regard to this matter. This debate has satisfied me that this entire section had better be stricken out. I think that when, by the Constitution, we provide that the law in relation to these railroads shall not be special, and that the entire subject shall be regulated by a general act applying to all the cities and villages in the State, we have done all we should do in the premises. Nor do I believe we would have reason to apprehend corruption, to any damaging extent, in the passage of such a general law. It is obvious that when the subject shall come before the Legislature for the passage of a general law, which is not to apply to one particular city alone, but to every city in the State, and to every incorporate village, the result will be that every member of the Legislature, representing the many localities directly interested, will be alive to the subject; and we have reason to expect that a well matured law will be passed in regard to the matter, just in its provisions and general in its character, and that all this scramble, and these disgraceful scenes about which we have heard so much heretofore, and I doubt not truly, will be done away with. Without intending to debate the particular question under consideration, I wish to say that I am inclined to move, when it shall be in order, to strike out this entire section.

Mr. OPDYKE—I desire to say a few words in answer to the gentleman who has just taken his seat [Mr. Ferry]. Suppose we put in the Constitution a provision requiring the Legislature to pass a general law applicable to all the cities and villages in the State. Unless we qualify that power, I take it or granted that the Legislature will have a right to say that in any street of any city or village a railroad shall be laid down. Now it seems to me that the gentleman entirely overlooked the fact that localities have rights which the State should not interfere with, and that among these rights there is none more vital than the right to have the care and regulation of their own streets. Suppose that such a law is passed; let us apply it to the city of New York as an illustration. Parties go into narrow streets appropriated to

merchants' warehouses, and thereby the street is so obstructed that the merchants cannot, with any convenience, carry on their business; so that the value of that street is destroyed. Now, I give this as an illustration because it has actually taken place, not so as to absolutely prevent commerce in the street, but so as greatly to obstruct its operations, and diminish the value of property twenty-five, and, perhaps, in some cases, fifty per cent. Suppose, again, that they go to Fifth avenue, which would be a very valuable street for a railroad, and would accommodate a good many people. We know how much a railroad track obstructs a street for the use of vehicles. Fifth avenue is the only avenue by which carriages can reach the Central Park without encountering these obstructions; but if a railroad track is laid down there, those who visit the park in carriages will go there not only at the risk of their property, but at the risk of their lives. Now, the power of the Legislature should not be an absolute power, but there should be power to restrain and control this matter, and who so proper to have that power as the local authorities of cities? Take the mayor and common council of New York; they are the representatives of that city. Whether they be pure or impure is a matter that concerns the residents of that city, and not the residents of the other parts of the State. The people of New York have taken the responsibility of electing these officers, and they are the official representatives of the people. If a railroad is projected in any given street, then the consent of the property owners is required; and if the property owners should be selfish and refuse the required permission, the parties desiring to build the road can go to the supreme court; and if that court decides that it will tend to the public good, the decision of the property holders will be overruled. That is the provision as it now stands, and I believe that it is in all respects proper; and I believe that these limitations to the power of the Legislature are absolutely necessary to the security of the property of the residents of cities.

Mr. FERRY—The only difference between the gentleman [Mr. Opdyke] and myself would be this: I would postpone the settlement of these details, which he desires to have ingrafted in the Constitution as a part of it, for legislative action, when the Legislature shall be called upon to pass a general law. In the absence of apprehended corruption, no member here, I presume, will contend that the Legislature will be less able to pass a law that will be satisfactory to the people of the State than this Convention. It strikes me that the Legislature will have more ability to pass such a law, particularly when it is a general law affecting all the cities and villages in the State, and all the members will be wide awake and active in their efforts to make it a salutary law. Now, I will have no controversy as to what plan is the best. The tribunal to which I would refer that question is the Legislature; and I do not see any reason to suppose that there would be more corruption in the Legislature, in connection with the passage of such a general law, than in this body. I will not dispute, sir, with the gentleman as to whether his idea is or is not entirely correct;

but I say that the determination of that should be left to the Legislature when they come to pass this general law.

The question was put on the motion of Mr. McDonald to reconsider the action of the committee in striking out the word "highest" in the seventeenth line, and also to add after the word "bidder" the words "or to the person who," and it was declared lost.

Mr. STRATTON offered the following substitute for the entire section:

SEC. 23. No railroad, except such as shall be constructed underground, shall hereafter be constructed within any of the cities of this State, until the consent of the local legislative authorities of such city shall be at first obtained for that purpose, and also the consent of at least, one-half in value of the property on the line of the street or streets through or over which the same shall be constructed, be previously had and obtained for that purpose, or in case the consent of such property owners be not obtained, then with the consent of the general term of the supreme court of the district in which such road shall be located to be first obtained; such consent to be obtained and authenticated in such manner as the Legislature shall by general law for that purpose, provide. The franchise allowing such road to be operated, shall be sold at public auction to the person, persons or corporation who will agree to carry passengers over such road at the lowest rate of fare, having reference to the facilities for carrying such passengers, and after three months' public notice, describing the route of such road, in the state paper, and in such newspapers in the city where such road shall be located, as the Legislature shall by law direct.

Mr. WEED—It strikes me that the substitute is better than the original section. It gives the city authorities control of all surface railroads, but it does not prohibit—as I suppose the section, as it now stands, would prohibit—the building of underground railroads. The gentleman from Cayuga [Mr. Rathbun] shakes his head; but from what I have heard of the common council of New York and of the local authorities of other cities, I believe that the section, as it now stands, would prohibit the building of underground railroads.

Mr. RATHBUN—I have heard about underground railroads for a great many years in this country. Before the war it was said that there were underground railroads leading from various parts of the south, north to Canada, but they were never chartered, so far as I know. [Laughter.] Now, the question is this: is an underground a street railroad? This section provides for street railroads. Are they underground railroads, or could the term street railroad, by any possibility, be so construed? By the use of the word street, a surface railroad is clearly indicated—a road running upon and in a street. An underground railroad is below the surface, and is no more a street railroad, than it would be if it ran on the tops of the houses.

Mr. WEED—Do I understand the gentleman to say that the section as reported, does not include underground railroads?

Mr. RATHBUN—It does not, at all.

Mr. WEED—Does it not use the words "through the street"?

Mr. RATHBUN—Yes; "through the street."

Mr. WEED—Well, under the street is through the street. [Laughter.]

Mr. RATHBUN—Not at all; through is through, and under is under. A street railroad is a surface railroad, and an underground railroad is not.

Mr. WEED—If the section as reported by the gentleman does not include underground railroads, then certainly he can have no objection to the substitute offered by the gentleman from New York [Mr. Stratton], except that it expressly exempts underground railroads from its provision.

Mr. RATHBUN—There can be no objection whatever to the amendment of the section by the insertion of the other words, that the gentleman from New York [Mr. Stratton] has suggested with regard to excepting underground railroads.

Mr. VEEDER—I suggested some time ago, when the word "street" was inserted, that the word "underground" should be included, and I got the idea that that was the intention. I submit that, if there is any railroad at all that should require the consent of the property owners living along the line of its route, it is an underground railroad in the city of New York.

Mr. VERPLANCK—I should like to ask the gentleman from Kings [Mr. Veeder], if he supposes that a railroad corporation has the right to build a railroad underground without compensating the owners of the adjoining property for the right of way?

Mr. VEEDER—That question was fully discussed in the Legislature of 1865 and 1866, when the question of underground railroads was up here. In the city of New York there are many stores that extend one or two stories underground and under the sidewalk, and some of them even under the street; and if you are going to exempt underground railroads from the operation of this provision, I think still worse of the amendment of the gentleman from New York [Mr. Stratton] as it stands here now.

The question was put on the adoption of the substitute offered by Mr. Stratton, and it was declared lost.

Mr. RUMSEY—I care nothing at all about this section, for it does not materially affect our portion of the country. It was put in solely because the delegates from the city of New York thought it gave the corporation of the city power to control these street railroads, and that the power ought to rest there—and in my judgment that is where it ought to rest. I ask the members of this Convention to look at the situation in which the city of New York will be placed without this provision, or some similar one. The twenty-eighth section provides that the Legislature shall, by general law, make a provision for the laying down of street railways in the cities and villages of this State. Now, if the law should be passed providing for the creation of companies for the purpose of laying down these railroads in all the streets of the cities of the State, they would have a right to go into any street and lay their street railroads without reference to the corporate authorities of the city concerned. The city of New

York has been making a clamor for years that the Legislature exercised just such power with reference to the affairs of that city, without its assent and against its will; and now when we propose to take it away from the Legislature and to put it into the hands of the corporation, the gentleman from Kings [Mr. Veeder] says that he does not want us to do any such thing. Now, if this provision is stricken out, there is nothing to prevent any set of men from laying down a railroad in any of the streets of the city of New York, and if the gentlemen from New York desire such a state of things to exist in their city, they are at liberty to have it so; but they cannot have it by my vote; although, as I said, my own section of the State would not be materially affected by it.

Mr. M. I. TOWNSEND—The gentleman from Steuben [Mr. Rumsey] tells us that if this provision be not retained in the Constitution, as soon as a railroad company shall be organized under a general law, it may come and locate its road in any of the streets of the city at will. Now, the gentleman fails to advert to the fact that the general law must prescribe the terms and conditions on which a railway company may be authorized to lay a track in the streets or villages of cities. Under our present general railroad law, passed in pursuance of a constitutional provision substantially the same as that contained in the twenty-eighth section, we have a railroad law—a general law, and that general law, as the gentleman from Kings [Mr. Veeder] has well said, prohibits the location of any roads upon any of the streets of any city except upon certain terms prescribed in the law. Now, we have an example before us of a constitutional provision such as is contained in this twenty-eighth section, which led to the passage of a law under which the cities and villages of this State have been adequately protected, and why not rely upon that in the future? The other day, when an attempt was made to reach millions and millions of property in the State not now upon the tax list, we were told that this body ought not to legislate—that we ought to leave the details of a law in regard to taxation to the Legislature. What has produced the change? Are the principles of legislation and the principles which should guide us in the formation of constitutional law changed within a week? If it was not right then for us to legislate, is it immensely right now? I know that the legislation proposed last week was intended to reach rich men who do not pay their proper portion of our taxes, and I know that this provision will inure immensely to the benefit of the rich monopolists. I understand all that, but I do not see that that will change the principle. Last week a state of things was shown by which we taxed sixteen millions out of some five hundred millions of property in the State; and it was contended that we could not correct the evil and bring this property within the purview of the assessor because it was not proper for us to legislate; but this week, when it was proposed to throw obstructions in the way of accommodating the mass of the people, and to aid the rich monopolists in the city of New York, it is deemed proper to legislate! For myself I do not deem it proper and I think it should be left

to the Legislature. My friend from Cayuga tells us about the steamboat loads of men and money that will come up from the city of New York to procure legislation in regard to these roads. Well, sir, they can come up only to procure a general law, if this twenty-eighth section shall be adopted. I have already passed some criticism upon the cry of legislative corruption, which has been raised so extensively here; and I know one friend in this Convention who has told me that he has come almost to think that I was in favor of legislative corruption. I am not, sir. I do not doubt that our legislation has been exceedingly corrupt. I do not doubt, sir, that the very monopolists who want these shackles put upon railroad legislation to prevent their being interfered with in their monopolies in the cities, have spent millions of money to corrupt the Legislature. Legislatures may possibly be corrupt in the future. I hope not; but I do not believe that every measure proposed here, is to be carried by raising the cry of legislative corruption. If it has any thing to do with this question I am willing to consider it, but if it has nothing to do with it, then I hold myself at liberty to criticize and argue the matter without reference to that cry. As I said before we have to restrict railroad legislation to general laws; and for one, I am entirely opposed to giving to any one, and particularly to the property owners along the streets of the cities, power to obstruct the progress and prosperity of the cities of the State.

Mr. CONGER—I wish to draw the attention of the committee to the fact that, in the year 1854, the Legislature passed a general act in relation to the construction of railroads in cities. That act was carefully drawn, and I think if it were read by the clerk for information, the committee would be satisfied that its provisions are much less objectionable than these which are now sought to be embodied in the Constitution. Without going into its details, I would further ask of gentlemen who approve the alternative provision in this section, submitting the final issue to the judgment of the supreme court, how the supreme court could adjudicate upon such a question, the consent of the corporate authorities having been obtained, but the consent of the property owners to the extent of one-half of the value of the property along the route having been refused. With what regard to principles of public justice could the supreme court be called upon to decide that a railroad should be constructed and operated? There is only one parallel case that occurs to me in which the supreme court is called upon to exercise judicial functions. That is in the matter of the assessment of damages in the laying out and improving of streets in cities, especially the city of New York. There the principal ground upon which the supreme court exercises jurisdiction and review is the assent of more than a majority of the owners of the property. But here, where the assent of only the minority is obtained, you propose to invoke the interposition of the court, and that, too, in the matter mainly of public policy. There is another difficulty about the details of this section which has not been alluded to as clearly as I think it ought to have been. By the amendment of the

gentleman from Clinton [Mr. Weed], you propose that the construction of this road shall be awarded to the persons who offer to do it for the lowest fare. Now imagine, for a moment, a competition for an important line of railroad in any of our cities. If one should offer to do it for four cents as suggested by the gentleman from Kings [Mr. Veeder], another might offer to do it for three and nine-tenths of a cent, that would be the lowest sum under your constitutional provision, and yet it would be wholly impracticable. Gentlemen must see that, coupled with this provision securing the lowest fare, there should be also a provision for giving the contract to one that would give the highest price or bonus for the franchise. I have said so much because I think that the committee on reflection will observe that the details of this section are imperfect, and that there are difficulties in regard to it which will make it wholly inadvisable to pass it. With the general provision in the twenty eighth section, the Legislature will be required to pass a general law, and I suppose it will be almost beyond the range of possibility that the Legislature would undertake to pass a general law applicable to all the cities of the State merely to work injury to the city of New York. With a statute on our books, such as I have alluded to, passed in 1854, I think we have the best warrant that the Legislature in carrying out the instruction given them to pass a general law on the subject, would pass one that would be better matured and more equitable in all its provisions than the section that is now before us. I shall therefore vote to strike the section out.

Mr. MILLER—I was about to advance this idea, that if we make a mistake in regard to this matter, twenty years must pass before we can correct it; but if the Legislature make a mistake it will have power to correct it at any time.

The question was put upon the motion of Mr. Veeder to strike out the entire section, which on a count was declared lost, yeas 35, noes 43.

Mr. STRATTON—I offer this as a substitute for the entire section: "The Legislature shall by general law provide for the incorporation of railroad companies within the cities and incorporated villages of this State."

Mr. BICKFORD—I strike me that this substitute is altogether preferable to the section as it stands. It does not prescribe details, but casts that upon the Legislature. If we are to retain the provision in the twenty-eighth section, which in my judgment is wrong, we should have no special laws of this character passed. Then this provision, which is flexible in its character, is what should be adopted; and I take this occasion to say, as I said before, that in my judgment the idea that railroads, especially in cities, and more especially in cities like the city of New York, are to be regulated wholly by general law, will be found impracticable. It is better I think that we should have special legislation adapted to each particular case where every thing can be provided for. It seems, however, to be the will of this Convention that the railroad law shall be general, and if so let this provision be as brief as possible.

Mr. STRATTON—It has become evident

during the discussion of this question, that this Convention will not perfect any article in relation to the construction of railroads in cities and incorporated villages that will be satisfactory. I therefore, in this substitute, throw the whole burden upon the Legislature, and make it their duty to provide for the matter by general law. The reason why we cannot make any article which will be satisfactory is because there is a necessary detail which we cannot here incorporate into an article. That detail belongs to the Legislature to provide, by general law, for the incorporation of these railroads in cities, which is a distinct matter from the incorporating of railroads throughout the rural districts of the State, involving other questions and requiring other limitations and other safeguards to be thrown around property and around the rights of the citizen. I say we have done our whole duty in this regard—all that the people of the State can ask us to do, and all that the public interests require. I therefore hope that this substitute will be adopted. The Legislature can then, by proper detail, which is purely legislative, provide these safeguards, which we could provide here if the work did not pertain so much of the nature of legislation.

Mr. BERGEN—I have no objection to the amendment offered by the gentleman, if he will go a little further. This substitute calls for a general law, as I understand it, for street railroads in cities. If those laws are necessary for railroads—street railroads, or horse railroads—they are equally necessary in the rural districts; and I would suggest to the gentleman from New York [Mr. Stratton] to add words to cover all parts of the State.

Mr. STRATTON—If the gentleman will give way a moment, I will say that I supposed that was provided for by the other section already. We have a general railroad law in operation which will not be interfered with by this provision. The general railroad law now in operation does not cover this question of railroads in cities and incorporated villages.

Mr. BERGEN—I am aware of our having a general law—a law passed by the Legislature; but I am not aware that we have a general provision covering villages and cities and country. But if the Convention have passed a provision of that kind what is the necessity of this action? The general railroad law of the State is no part of the Constitution. The motion of the gentleman [Mr. Stratton] provides for general laws for cities and villages, without reference to the country. I move to amend—I have not a copy of his section before me—by adding something of this kind, “and in other localities,” so as to cover the whole State. I am not particular about the language, if the whole State is covered by this amendment; so that the same rule shall apply to the country that applies to cities and villages, no matter what that rule may be.

Mr. LIVINGSTON—I would not object to the proposition of the gentleman from New York [Mr. Stratton] as an independent section; but I do object to it as a substitute, for the reason that it does away with the protection which this twenty-third section was intended to afford to the

cities by requiring the consent of the local authorities. We have just had a vote on that, after elaborate discussion, and we have agreed to retain that provision. It seems to me also unnecessary for the reason that the twenty-eighth section gives the Legislature ample power, by providing that the Legislature shall pass general laws not only in relation to railroad corporations, but in all other cases where a general law can be made applicable. I do not suppose there can be any doubt that under that section the Legislature would have the right to pass general laws in relation to railroads in the city, and general laws in relation to railroads in the country. For these reasons I think the substitute is unnecessary, and object to its adoption.

Mr. HALE—I would inquire of the gentleman from New York [Mr. Stratton] whether the section already adopted by the Convention, does not embrace the substitute which he offers. I refer to Doc. No. 92, the joint report of the Committee on Currency, Banking and Insurance, and the Committee on Corporations other than Municipal, Banking and Insurance, the first section of which is that “corporations may be formed under general laws, but shall not be created or their powers increased or diminished by special acts except for municipal purposes.” As I understand the substance of the amendment of the gentleman from New York, it is merely permissive. It must be remembered that this covers the entire ground, and embraces corporations for railroad purposes as well as any others.

The question was put upon the amendment offered by Mr. Bergen, and it was declared lost.

The question recurred, and was then put upon the amendment offered by Mr. Stratton, and, on a division, it was declared lost, by a vote of 36 to 46.

Mr. NELSON—From the examination I have given to this section, it strikes me that it might be difficult to fix the value of the property, so as to have half the value of the property on the street. How will you determine it? To meet that, I move to amend by inserting, after the words “value of the property,” the words “as fixed by the assessment roll of the previous year.” Then there is one other suggestion that relates to the same section. The Convention has voted to grant the franchise by a sale at the lowest price for carrying passengers. The sale is made; where is the limitation after the sale is made and the contract is entered into to carry passengers, perhaps for one cent a mile, upon the right of the Legislature to step in and say, “We will release you from that portion of the agreement, the violation of which, without release, would work a forfeiture of your charter?” To meet that, I will propose a second amendment to add, “and after the rate of fare shall have been fixed and agreed upon, the same shall not be increased.”

The CHAIRMAN—An amendment already adopted covers that.

Mr. NELSON—Then I merely move the first amendment I stated.

Mr. RATHBUN—I see no objection whatever to that amendment. I think it is correct.

The question was put on the amendment offered by Mr. Nelson, and it was declared carried.

Mr. DUGANNE moved to insert in section 28 the following:

"Regulating or prohibiting the sale or use of any article of food, or of native wines and malt liquors."

Mr. VEEDER—I offer the following independent substitute, as an amendment to the amendment. I offer it, to come in after line fourteen of section 28 —

Mr. AXTELL—I believe that that amendment is not in order. It conflicts with the rule we adopted this morning.

Mr. VEEDER—How can the gentleman understand that, when the amendment has not been read?

Mr. AXTELL—I judged from the gentleman's statement.

Mr. VEEDER—I merely stated where it was to be put.

The SECRETARY read the amendment as follows:

"Regulating or prohibiting the sale of wines, liquors, ales and beer."

The CHAIRMAN—Is the point of order insisted upon?

Mr. AXTELL withdrew the point of order.

Mr. VEEDER—The object of my amendment is very apparent. The first clause of section 28 provides that "the Legislature shall not pass local or special laws in either of the following cases;" and it goes on to enumerate certain classes of cases, to wit: that the Legislature shall not pass special laws in relation to the granting of divorces, for laying out, working, or discontinuing roads, etc. I desire to go further. I desire in the Constitution, if possible, to prohibit the Legislature from passing special or local laws in reference to the sale or prohibition of the sale of intoxicating liquors, ales and beer. In 1862 the Legislature of this State saw fit to pass a law entirely confined to the counties of Kings, Queens, Richmond and New York—the metropolitan police district, excepting the county of Westchester. That statute provides and establishes an excise board, and allows that excise board to charge a license fee. It compels parties who may be engaged in the traffic or sale of liquors to close up their establishments at certain hours, and to keep their establishments closed on Sunday. It makes it a crime to sell without a license, or to expose for sale without a license, or to sell after the hour at which they are required to close. Yet if you cross the Harlem river, and go into Westchester county, it is no crime at all. I submit that if there is any propriety in prohibiting the Legislature from passing local or special laws, it is particularly applicable to the sale of intoxicating liquors. I am at a loss to understand why it is necessary that the Legislature should single out the counties of New York and Kings, and compel the liquor dealers of New York and Kings to pay an exorbitant license fee, and prohibit the sale of liquors on Sunday, or any other day of the week after twelve o'clock at night, and before sunrise, when if you cross the Harlem river, a narrow stream, you can sell liquors every day of the week, and at all hours of the night.

Mr. AXTELL—I rise to a point of order; that the subject-matter embraced in this amendment is a subject-matter which is referred to the Committee on the Prohibition and Adulteration of Liquors, and therefore cannot properly be considered now.

The CHAIRMAN—The Chair is of opinion, from the practice of the Convention, that the point of order is not well taken.

Mr. VEEDER—I do not see why the gentleman should be so much exercised by the discussion of this question. I think this is the proper time and the proper place to discuss it. If we are considering the subject of local and special legislation, I think we have a right to present any subject, and state our reasons why we believe that special or local legislation with regard to that subject, should be prohibited.

Mr. HAND—I would inquire if it is in accordance with law to sell liquor on the Sabbath in any portion of the State?

Mr. VEEDER—I have not said any thing of the kind.

Mr. HAND—I understood the gentleman so; that you could not sell in New York on the Sabbath, but if you crossed the Harlem river you could sell liquors any day of the week.

Mr. VEEDER—I have not said that it was in accordance with law; but I was speaking of the statute passed in 1866 enforced in the cities of New York and Brooklyn, and nowhere else. There is no statute power, except so far as relates to the city of New York, Kings county, Queens county and Richmond county, to prohibit the sale of lager beer on Sunday. On the contrary, in 1866 the Legislature thought they were doing to this class of people a favor in passing a special statute with reference to our counties, and prohibiting even the sale of lager beer. There is no other law upon the statute book prohibiting its sale elsewhere; and it is only prohibited in the places I speak of. I do not desire to go into the details, or to show how that law is working in our county [Kings]. I simply mention it as a fact that one of the great objects sought here was to reduce our taxation by the fund raised from the licenses granted to the liquor dealers, which was to go toward paying the expense of the police department. But I find our tax levy is precisely the same as before this was appropriated, and I find that the same fund is raised for the expense of the police department as before the passage of this law. I desire to submit this question, without saying any thing further, and I ask the Convention to pass upon it.

Mr. DUGANNE—I place my amendment upon the plain and simple basis of the equality of every community before the law of the State. I need not advert to the question which has been so much discussed, and which has become so much an element of political power in the State of New York. I need not remind my political friends upon this floor, that the question had something to do with the late elections. I place it merely upon the ground of fact and justice. It is a fact that this species of legislation bears unequally and unjustly upon certain localities in the State. It is a fact that the people are aware of this, and that they have shown their indignation in the re-

cent election. I want no better instruction, as to my duty as a delegate in this Convention, and as a representative of the people, to do what I can in my place as a single member of this Convention, to equalize the legislation of the State in regard to this one particular subject, if no other. I propose, therefore, that the Legislature shall not pass local or special laws for the regulation or prohibition of the sale or use of any article of food, or of native wines and malt liquors. I say of native wines and malt liquors, because a question of the commercial interests of the State is involved in the use or sale of these commodities—products of the State of New York. I am not prepared to go so far as the amendment prepared by the gentleman from Kings [Mr. Veeder], because I have my ideas with regard to moral agencies. I have never conceived it to be an immoral agency, or an anti-temperance agency, in this State, to encourage the use of cheap wines and malt liquors. I believe, on the contrary, that one of the most efficient agents of temperance that we can possibly bring to bear upon the community, would be the encouragement of the use of those light beverages which satisfy a natural thirst for some stimulant for the human system, and which do not operate with evil effect upon the human constitution or upon the morals. I have therefore confined my amendment to these particular articles, leaving it to the state to legislate generally in regard to such other articles as may come under the head of adulterated liquors, poisonous and drugged beverages, and which may involve the question entire of prohibition. I rest this amendment upon the ground of equal and exact justice to all localities of the State. I ask gentlemen of the Convention to give it serious consideration; and to be careful that they do not make a mistake, in discussing it, or in acting upon it, because it comprehends an issue in which the people of this State are more interested, and which may have more influence upon the future of this State, politically and socially, than gentlemen may be aware of or give credence regarding at the present time.

Mr. SMITH—I hope this amendment will not pass. The amendment doubtless is, as has been ruled by the Chair, technically in order, because the article or section under consideration relates to the power and duties of the Legislature. Still, it is not strictly within the spirit of this article. There is a committee that has in charge the subject of the sale of liquors, and all matters connected therewith. There have been a great many petitions presented to this body, coming from various localities, and representing almost every shade of opinion upon this difficult question of regulating the sale of intoxicating drinks. These petitions have all been referred to that committee having this matter in charge. It is to be presumed that they will consider the whole subject carefully, and the powers and duties of the Legislature in relation thereto, together with all the matters in relation to the subject, and after they shall have matured their views, that they will present the matter to the Convention. We shall then be able to act understandingly, having the advantage of their deliberations, and shall be prepared to discuss the subject and consider it in all

its bearings. But at present I suppose this body is not prepared to discuss the subject. We have been considering the duties and powers of the Legislature generally, in relation to other matters, having no relation to this great subject. I hope the discussion of this matter will not be thrust upon us at this stage of our proceedings; but that it may come up at some other time. There are reasons why the Legislature should have power to make laws on this subject for certain localities, different from the general laws of the State. There are considerations applying to that subject that do not apply to any thing that has been considered in connection with this section thus far or that were contemplated by the committee who presented this article for the consideration of the Convention. The disposition of this question involves great difficulty. It requires very careful consideration and mature deliberation. My own judgment is that the whole matter should be left to the Legislature to regulate, according to circumstances hereafter; that we should not attempt in the Constitution to make any absolute, inflexible rule on the subject. I hope that for the reasons I have stated, and for others which might be suggested, that the amendment will not be pressed, or that it will be voted down; and when the subject comes up properly, on the report of the committee, we can consider it in all its bearings, and act intelligently.

Mr. GRAVES—I submit to the gentleman from Kings [Mr. Veeder] whether the report of the committee on this subject, on the three subdivisions of the resolutions submitted to that committee, would not cover all that is desired and raise all the questions contemplated by the motion he has made here:

1. Whether, in their opinion, under our republican form of government, any authority should be granted to sell, or any prohibition enacted against the sale of intoxicating liquors, either by a legislative or organic law of the State.

2. Whether, in their opinion, the sale of intoxicating liquors should be denied to all except such as shall receive a certificate under the hand and official seal of a person properly qualified and duly appointed, showing that the liquor offered for sale had been carefully analysed and was unadulterated, pure and contained no poisonous drug.

3. Whether, in their opinion, any law authorizing or prohibiting the sale should not be organic instead of legislative—thereby enacting a rule controlling and regulating public opinion and relieving each successive Legislature from the pressing importunities of those in favor of, or opposed to the sale of intoxicating drinks.

The report, it seems to me, on these three subdivisions, will embrace all the questions contemplated here by the gentleman.

Mr. VEEDER—In answer to the inquiry of the gentleman from Herkimer [Mr. Graves] I will say, that I do not understand that the subject they have under investigation touches at all the question of special legislation. The point here is as to the right of prohibiting the Legislature from passing special laws, with reference to localities, as to the sale of intoxicating liquors, not at all as to the passage of those laws; but re-

quiring that the laws shall be made general and not special. That is the only object I am anxious about in my amendment now. I desire that the question shall be fixed here as in all other classes of cases.

Mr. GRAVES—The first subdivision is the question of legislative power, and it covers both general and special legislation.

Mr. COCHRAN—I would say, as a member of that committee, that I remember that several memorials were referred to us asking for the passage of a constitutional provision requiring that the laws should be uniform throughout the State; and I regard that as one of the questions before the committee, whether the laws should be uniform.

Mr. VEEDER—With all due deference, that is before the committee and not before the Convention, and I see not how it will come before the Convention. I have no assurance that the committee will report. I do not know that they will find time to report to the Convention. It is very late in the day, and I think this is the proper time and place to discuss this question. It properly comes in here, and properly belongs here. I desire that members of the Convention may meet the question fairly and squarely. I desire those in favor of it to vote for it, and those opposed to it to vote against it.

Mr. E. BROOKS—My friend, the chairman of the Committee on Prohibitory Laws and Adulterated Liquors [Mr. Graves], has put to the gentleman from Kings [Mr. Veeder] a question with regard to the resolutions under which the subject of intoxicating drinks is before the committee of which he [Mr. Graves] is chairman. Now, I wish to put a question in return, and that question is, whether there is any probability that that committee will report at an early day upon this subject, and whether there is not such a division in the committee as makes it practically impossible for them to agree upon any report whatever?

Mr. GRAVES—I will answer the gentleman by saying there is no doubt but the committee will report. It is not certain that the committee will agree.

Mr. SMITH—I had the honor of offering a resolution this morning, calling upon all the committees that have not reported to make their reports on or before the 27th. I design to call that up, and I hope it will be adopted, instructing all committees which have not yet reported to report certainly by the middle of next week.

Mr. GRAVES—I have no doubt that the committee will report within the time specified in the resolution of the gentleman from Fulton [Mr. Smith].

Mr. E. BROOKS—That may be or may not be. I have no doubt of the entire good faith of the chairman of the committee and his willingness to report. I know he has endeavored to secure the attendance of members of the committee of which he is chairman. Nevertheless, this subject is properly before this committee at this time. It relates to the powers and duties of the Legislature. It proposes simply, as has been said, that there shall be uniform laws upon the subject named in the amendment now under consideration. My constituents are affected by this propo-

sition. The Legislature of the State have thought proper to say by law that the inhabitants of the county of Richmond shall be governed by one law, and that the inhabitants of the great majority of the counties of this State—all but four counties—shall be governed by another law. Sir, it is a reflection upon my constituents, who are as sober, as upright, as pure, as intelligent as the constituents of any other delegates of this Convention. I think that this discrimination is entirely unjust. As a matter of principle, I hold that all these laws ought to be uniform, especially where they affect the habits and appetites of the people. That this amendment is proper, I think must be obvious, not only from the ruling of the Chair, but from the great variety of subjects under consideration in the section of the article now before us. It is certainly just as proper to insert this provision as it is to say that the Legislature shall not pass local or special laws granting divorces, or regulating the sale, mortgaging or leasing of the real property of minors, or changing the names of persons. I hope, if the committee are not prepared to consider the subject to-night, they will sleep upon it, and be prepared to act upon it in the morning.

Mr. BICKFORD—Will the gentleman please to state wherein his constituents are bound by law upon this subject, as to any thing that my constituents are not?

Mr. E. BROOKS—Because they are a portion of the metropolitan police district, and because the metropolitan police district undertakes to regulate the sales, and interfere with the habits of the people of the county; and because the law that operates upon them does not operate upon the people represented, by the gentleman from Jefferson [Mr. Bickford].

Mr. BICKFORD—The police regulations have reference to the enforcement of the law, and not to the provisions of the law itself.

Mr. E. BROOKS—Yes, sir; to the law itself.

Mr. BICKFORD—Then how are the provisions of the law different in Richmond county from what they are in the county where my constituents live?

Mr. E. BROOKS—In a great many ways. If the gentleman will read the excise law, he will see that, without any equivocation or subterfuge whatever, it applies to the people of the counties of Richmond, Kings, Queens and New York, and does not apply to the people of the county of Jefferson.

Mr. BICKFORD—Is not that with reference to the enforcement of the law merely—the machinery for its enforcement?

Mr. E. BROOKS—No, sir; no, sir.

Mr. BICKFORD—Is the substance of the law different?

Mr. E. BROOKS—Yes, sir; entirely different. And in relation to this subject, let me say that these very police belonging to the city of New York are sent to the county of Richmond and exercise there a system of espionage over the entire habits of the people whom I in part represent here; that not one of those policemen transferred from the city of New York to the county of Richmond, for which the people of the county of Richmond are taxed some \$30,000 a year, be-

longs to that county. They take the lame and the halt and the blind and make a sort of a hospital of the county of Richmond for police officers from the city of New York, who are in many respects inefficient in the discharge of their duties.

Mr. HAND—We will suppose that I have been so unfortunate as not to have read attentively that law. I ask for information. There are two things with regard to the law. One thing is the statute itself, the injunction or the thing forbidden or enjoined; and the other is the machinery by which it is enforced. Now, the machinery of the cities, their police as well as their other machinery, differs from the machinery of the rural districts. I would ask the gentleman in what respect the statute itself, or the thing forbidden, differs in that district from any other part of the State.

Mr. VEEDER—It requires us in Brooklyn to pay \$250 license, and here you pay but \$30; that is one thing.

Mr. HAND—I would ask if that is not left to each city for the board of commissioners to regulate for itself.

Mr. VEEDER—In the country the license fee is not to exceed \$30, and in the city not to exceed \$250.

Mr. HAND—They differ in different places.

Mr. E. BROOKS—The gentleman knows very well that it regulates not only the license fees, which are different in one district from what they are in another, but regulates and controls the time.

Mr. HAND—In what respect?

Mr. E. BROOKS—A man living in the county represented by the gentleman, may open his store at six o'clock in the morning, or keep open until half-past twelve at night.

Mr. HAND—Not on the Sabbath.

Mr. E. BROOKS—That is under some local legislation. The State has never undertaken to say that he shall not keep his store open until half past twelve o'clock at night.

Mr. HAND—It has.

Mr. E. BROOKS—Whereas, in the city, that thing is done; and that is what we complain of. Why should we not apply to Broome county the same rules and regulations that apply to Richmond county?

Mr. HAND—They do not require the same.

Mr. E. BROOKS—I do not deny that there is a great deal of virtue in the people living in the country, although common observation teaches us that in proportion to their numbers there is just as much vice in the rural districts as in the cities of the State. That corresponds with my own observation, particularly on the lines of the railroads and the canals. But apart from this, there is a good deal in this proposition which it seems to me ought to commend it to the approval of the committee. As the gentleman who originated this amendment [Mr. Duganne] has very properly said, the people have taken notice of these discriminations against certain parts of the State, and have pronounced their judgment upon them; and they will pronounce their judgment upon them until this discrimination is altered, and until these laws become equitable or equal in all parts of the State.

Mr. PRINDLE—Whenever any subject has arisen in this Convention having any sort of relation to the subject of charities, the gentleman from Richmond [Mr. E. Brooks] has requested the Convention or the committee, to postpone the subject until the report of the Committee on Charities should be considered; and that request has been granted. It seems to me that the consideration of this question belongs with the report of the committee of which the gentleman from Herkimer [Mr. Graves] is chairman. It belongs to the great temperance question or liquor question, and we shall certainly be better prepared to consider it after we have the report of that committee, so that we can consider it with all the other questions connected therewith. I shall vote against this amendment, not committing myself upon the question at issue, one way or the other, but simply because I think it ought to be postponed until the other questions connected with it are considered.

Mr. WEED—I will ask the gentleman from Herkimer [Mr. Graves,] if he will answer me, if there is any probability of the committee of which he is chairman, making a report to this Convention for a prohibitory law?

Mr. GRAVES—As regards myself, I am under no obligation to answer that question.

Mr. WEED—If the chairman of the committee does not consider himself under any obligation to answer that question, it is certainly the only question referred to his committee that touches the question under consideration here. His friends ask that this may be postponed, because his committee has not reported. If that committee do not report a prohibitory provision, then the discussion of this amendment at this time does not at all interfere with the report of that committee, because that is the only portion of the resolution upon which that committee was raised, which this touches in any shape or form. This does not touch the question, as to what shall be the regulations for the selling of liquor. It does not touch the question of adulterated liquors, referred to that committee; but it simply provides what all my republican friends on the floor of this Convention have claimed, that we will stop special legislation, and have nothing but general legislation. It asks this Convention simply to say, that all excise laws throughout the State shall be general and not special. Then let the gentleman from Herkimer [Mr. Graves,] make a report from his committee, providing for just such excise laws as he sees fit, and it will be properly discussed and weighed by the members of this Convention and passed upon; but it must, in view of the action of the Convention here, if this amendment shall be adopted, simply be general throughout the State. I say, therefore, it is no discourtesy in any shape or form, to that committee to consider, discover and pass upon this question at this time.

Mr. AXTELL—I shall vote against this amendment, not because I am opposed to the idea involved in it, but because I think it will properly be considered in connection with the report of the committee to which reference has been made. I do not believe in special legislation. I believe that the substantial provisions of that law, to

which reference has been made by the gentleman from Kings [Mr. Veeder], should be extended over the whole State; and that is the reason why I shall vote in the end for some such provision as this. I have had my sympathies tremendously stirred while I have listened to the long catalogue of oppressions to which the constituents of the gentleman from Kings [Mr. Veeder], and the people of that vicinity, have been subjected under the excise law, which, however, has given the people some quiet. But while I am opposed to special legislation, I am in favor of such a provision being embodied in the Constitution as shall give to the people of this State the power to grapple with the accursed evil upon which many men who are engaged in political life appear to look with perfect complacency, and of which they appear as the special advocates. I hope the time will come when all this cant about oppression in regard to men who are subjecting the State to taxation and burdens, who are pushing thousands of our citizens into a drunkard's grave, will cease, rebuked by the enlightened sentiment of the people of this State.

Mr. CURTIS moved that the further consideration of this subject be postponed, with the view of awaiting the report of the Committee on Prohibition and Adulterated Liquors.

Mr. VEEDER raised the point of order that such a motion was not in order.

The CHAIRMAN—The Chair is of the opinion that the point of order is well taken.

Mr. LANDON moved that the committee rise, report progress, and ask leave to sit again.

The question was put upon the motion of Mr. Landon, and it was declared lost.

Mr. VEEDER—The inquiry has been made about the different statutes. I am not prepared to-night to discuss this question as fully as I would like; but in hastily looking over the laws I will refer gentlemen to the laws of 1866, among which is the statute against which I complain particularly—the law regulating the sale of liquors in the metropolitan police district, other than the county of Westchester. Under the old law of 1857, chapter 628, the license fee is not less than thirty dollars nor more than two hundred and fifty dollars in cities; and in incorporated villages and towns, not less than thirty dollars nor more than one hundred dollars. This extends over the county of Richmond; it extends over the county of Queens; and it extends over five country towns in the county of Kings. Every man who takes out a license to sell liquor in any of the country towns of the county of Kings is obliged to pay a license fee at the highest figure—two hundred and fifty dollars. Under the old statute, if he lived in a town or incorporated village, the license would be not be more than one hundred dollars. So it is the county of Richmond, and so it is in the county of Queens. That is one difference in the statute. There is another provision making it a criminal offense to sell. Under this law of 1866, parties who sell liquors without a license, in quantities less than five gallons, are fined not less than thirty dollars nor more than one hundred dollars, and with imprisonment of not less than ten days nor more than thirty days. Under the law of 1857 he was liable to a penalty of fifty dollars for each offense.

But the statute of 1866 makes a criminal offense of it.

Mr. BECKWITH—If the gentleman will look at that statute which fixes the penalty at fifty dollars, he will find that it also makes it a misdemeanor.

Mr. VEEDER—I have been told so, but I do not find it in the statute.

Mr. BECKWITH—It is a fact, as I know.

Mr. VEEDER—There is another distinction. There is nowhere in the law of 1857 a provision for selling liquors on a week day, and that in a particular district the place shall be closed at twelve o'clock at night, and be kept closed until sunrise and be kept closed all day on Sunday; but that law only forbids selling liquors on Sunday, and you could keep open all night if you chose. Again, the law of 1857 does not prohibit the sale of lager beer without a license. The law of 1866 does prohibit it absolutely on Sunday, whether you have a license or not, and prohibits the sale of it between twelve o'clock at night and sunrise on a week day, absolutely, and obliges you to have a license to sell at any other time. Under the law of 1857 you could sell without a license, week days or Sunday.

Mr. BICKFORD—The statute of 1857 applies to intoxicating liquors, and if lager beer is intoxicating it would come within the law of 1857.

Mr. BECKWITH—It was held in my district that it is intoxicating.

Mr. VEEDER—We say it is a national beverage. The act refers to "strong or spirituous liquors or wines."

Mr. NELSON—The gentleman from Clinton [Mr. Beckwith], says that lager beer in his district has been held to be intoxicating liquor; and it seems to me that it may be well to call the attention of the committee to the rulings of the courts in reference to the various statutes regulating the sale of liquor. The old statute prior to 1830, read like this, that "no person shall sell at retail any strong or spirituous liquors." About the year 1830 commenced the temperance movement; I cannot state accurately the time. Gentlemen, will bear in mind that the old temperance pledge permitted the use of fermented liquors. In 1830, the temperance movement being then in progress, the statute of this State was amended by adding to it the words "or wines." After the amendment of the statute, the first question that went to the courts of this State, was whether ale, lager beer, or any liquor (other than wines) produced by fermentation came within the prohibition of statute; the argument being that the words "strong and spirituous" as used in that statute were used synonymously, as we say the "North or Hudson river," and by comparison of the laws in which these words were used it was found that there were statutes, that you should not sell strong liquor on a steamboat or spirituous liquor within such a distance of a camp meeting, or strong and spirituous liquor on Sunday; it was almost a demonstration that strong and spirituous liquors, indicated the same kind of liquor, and that produced by distillation. The authorities on that subject will be found to be extensive. In a case that went up from Putnam county, the supreme court held that

the mere statement in the declaration that the person sold "ale or strong beer," was the same as the statement that he sold strong and spirituous liquors. From that decision of the supreme court, the case went to the court of errors, and Chancellor Walworth's opinion concurred with that rendered in the supreme court, but finding that a majority of the court of errors was against him, he says in the conclusion of his opinion, "I am willing to admit, however, that all fermented liquors do not come within the term strong and spirituous." The result of that case was adverse to the decision of the supreme court. The question next came up in the second judicial district, whether ale came within the statute. Members of the Convention will find that case reported in the reports of that district, and after argument the judges, after a careful examination of the laws of this country and of England, upon the subject of excise, came to this conclusion, in which one of the judges, supported at his election by the temperance people of that district, fully concurred, that ale did not come within the terms "strong and spirituous." The next step with respect to the excise laws of this State, was when the question of lager beer became such an important question, as to attract attention in the newspapers, and even to figure in the illustrated papers, when pending in the courts. Then the court held that under the statute prohibiting the sale of "strong and spirituous liquors or wines," proof of the sale of lager beer was *per se* sufficient to justify a conviction, and that they would take judicial notice that lager beer is a strong and spirituous liquor. This is the case to which the gentleman from Clinton [Mr. Beckwith] refers. The result was, in one portion of the State it became a question of fact. The courts said, we will not take judicial notice, we will not assume that all these liquors, call them what you may, call them lager beer, call them ale, call them "striped pig," or any thing else—we cannot take judicial notice that they are strong and spirituous, and therefore come within the statute; but will submit it to a jury to determine, under proper instructions from the court, as a question of fact whether the liquor sold comes within the prohibition of the statute. This Convention will remember the history of these controversies, where one man testifies to drinking a number of gallons, I forget how many, and it was undertaken to be demonstrated that if you should take the skin from the witness and set it up like a bottle, it could not hold the quantity which the man swore he drank. And the cases in reference to lager beer stood until the decision of the general term before referred to by the gentleman who immediately preceded me [Mr. Beckwith], leaving it as a question of fact—whether the liquor sold contained such an extent of alcohol that the human stomach will contain enough of it to produce intoxication. If it will it is strong and spirituous. The question finally came to the court of appeals, and was there (they say a mouse has the right to look at a king, therefore I have the right to express the opinion that is my judgment), the decision of the court pronouncing that ale did come within the statute terms "strong and spirituous," was made by a majority of the court against the

opinions of "the learning of the court." Now, to return to the lager beer question. It stood, as I have stated, in this State, until the decision referred to by the gentleman. There is but that one single case in which they held that the court would, upon proof of a sale of lager beer, without further proof, determine that it was a strong and spirituous liquor. If that is correctly determined, of course all wishing to respect the courts, and render that obedience which every citizen owes to the law, must say that lager beer or "striped pig," as I understand it has been styled in some places, is intoxicating. Now, one suggestion in reference to this act. The point that strikes my mind is this: By the amendment of the gentleman from Kings [Mr. Veeder], he proposes not to settle or determine what should be the provision of any statute adopted by the Legislature, but to require that the law regulating the sale of liquor should be general throughout the State. It is wholly unimportant to call upon the gentleman to point out where the difference is between the act of 1857 and the law relating to the cities of New York and Brooklyn. There is a difference, or the Legislature would not have enacted that law, because prior to the enactment of the law with reference to the city of New York, or rather, the metropolitan district, except Westchester county, the act of 1857 covered such district. Therefore, beyond the fact of the appointing of the police board as excise commissioners, there must have been an important difference between the general act of 1857 and the special law that relates to the cities of New York and Brooklyn. If there had not been this difference they would not have made the law. An examination of the laws on the subject will disclose that when the wants and necessities of the people dictated to them the propriety of passing a law regulating the sale of liquor, they made it to apply to the cities of New York and Brooklyn, and to the country portions of the State alike. If you confer by your special law benefits upon the cities of New York and Brooklyn, you should confer upon us in the country the same benefits. Let them be general. If they work well in New York let them apply in the country. If they work ill there, then relieve the people of those cities from their operation.

Mr. COCHRAN—I if the gentleman will permit me, I would like to ask him whether it has not been decided in his district by the supreme court, that in the act of 1857, the sale of liquor without a license is entitled a misdemeanor?

Mr. NELSON—Certainly; and that is the provision in the old statutes prior to 1857. It gave there a penalty of fifty dollars for each violation, and also made each sale a misdemeanor. The act of 1857 gives the same penalty, and also provides, in addition to the penalty, that each sale of less than five gallons, without a license, should be a misdemeanor, liable to punishment the same as any other. The difference between the two laws it is unnecessary to point out. There is a difference, we all know.

Mr. DUGANNE—I do not propose to discuss this amendment, but wish to say a word in reference to the expressions used by the gentleman from Clinton [Mr. Axtell]. He hoped that at

some future time the people of the State or the individuals or parties who are not of the same opinion as himself, should cease to deal in cant. Mr. Chairman, I am as weary of cant as the gentleman is, but I am weary, too, of the cant which finds special cause of offense in the food and drink that goes into the human system; but which allows vice and crime to riot in cities and towns without restriction or the notice of the law, or the carrying out of the laws even if they do notice it. Sir, there are offenses in the city of New York and in all our large towns, as we well know—offenses and practices of more, vastly more, evil consequence to the people of the State, in a moral and material sense, than the indulgence in any beverages which you may name. We have our gamblers there; we have our prostitutes there; but I have not yet heard of a special law enacted to cover such complaints, and root out and extirpate such evils. I am afraid that many of the gentlemen who talk loudest about cant, come within the meaning of the poet, when he said that they—

"Compound for sins which they're inclined to,
By damning sins they have no mind to."

Mr. AXTELL—Will the gentleman allow me to ask him a question?

Mr. DUGANNE—Yes, sir.

Mr. AXTELL—I would ask him if he does not know that intemperance and prostitution are very closely allied? If he is not aware of that fact, and that if you were to suppress intemperance you would to a large extent suppress prostitution?

Mr. DUGANNE—I have never had any experience in the combination of these evils and I cannot answer practically. [Laughter.]

Mr. AXTELL—I would ask the gentleman, if he has not already alluded to the subject of prostitution and his own observation in the city of New York?

Mr. DUGANNE—I have observed and I hope I have profited by the observation of many things, not only in New York but in the rural districts.

Mr. CURTIS—Will the gentleman give way a moment?

Mr. DUGANNE—Yes, sir.

Mr. CURTIS—With his permission I move that the committee now rise and report progress.

Mr. DUGANNE—I have the floor. I do not wish to consume the time of this committee. I have only adverted to this subject because I have recognized and mourn the fact, that there is altogether too much cant upon the entire question, and that what in former years was simply moral cant, has now become political cant. I do not desire to see the party or the men with whom I act, politically, committed to any course of action which shall not be for the interest of the whole people of all localities, and for the just distribution of all legislation in such manner as to redound to the interest of the party and the individuals with whom I act. It is for this reason that I have offered the amendment. And I am free to say to-night, I have taken no counsel upon the matter; I do it of my own volition, and if members of my own party accord with me in it, I shall give them praise for wisdom if not for counsel. I think that the difficulty is not that the present is not the time or place for the ques-

tion to be considered, or that the committee in charge of the matters germane to it, have not yet reported. The difficulty is, *there is lack of backbone here to meet the question.* I want to see gentlemen come up and discuss this fairly and honestly, and if certain sumptuary laws come properly under the head of special legislation, which ought to be prohibited, I want to see them here and now discussed, with a view to insert an amendment in this section, where special legislation is to be constitutionally forbidden.

Mr. VEEDER—I do not want to tire the Committee; but I desire simply to point out one other distinction between these laws. The law of 1866 authorizes the members of the police to enter a man's house and arrest him and carry him before a magistrate, whether they see the offense committed or not, and close up the place and keep it closed. Under the statute of 1857 they were authorized to arrest only without warrant where an offense was committed in their presence. The police can invade any person's premises in Brooklyn, without warrant, without previous observation, and only upon information.

Mr. CURTIS—I renew my motion that the committee rise and report progress.

The question was put on the motion of Mr. Curtis, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the Chair in Convention.

Mr. ANDREWS, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Powers and Duties of the Legislature, had made some progress therein, but not having gone through therewith had directed their chairman, to report that fact to the Convention and ask leave to sit again.

Mr. BICKFORD—I move that the Committee of the Whole be discharged from the further consideration of the report of the Committee on the Powers and Duties of the Legislature, and that the same be considered in Convention, and on that I call the ayes and noes.

Mr. WEED—I move this Convention do now adjourn.

The question was put on the motion of Mr. Weed and it was declared carried.

So the Convention adjourned.

THURSDAY, November 21, 1867.

The Convention met at 10 o'clock, pursuant to adjournment.

Prayer was offered by the Rev. J. L. REESE.

The Journal of yesterday was read by the SECRETARY and was approved.

Mr. MORE—I ask indefinite leave of absence for my colleague, Mr. Mattice.

There being no objection, leave was granted.

Mr. MORE—I also ask leave of absence for Mr. Hardenburgh, on account of illness in his family.

There being no objection, leave was granted.

Mr. ENDRESS presented a remonstrance against the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. GRAVES presented a petition from one

hundred and fifty persons, forwarders, boatmen and practical canal men, praying for the early completion of the Erie canal.

Which was laid on the table.

Mr. M. H. LAWRENCE presented a communication from R. H. Williams on judicial reform, which was read by the Secretary.

Which was referred to the Committee of the Whole.

Mr. REYNOLDS presented a communication from Francis W. Glenn, requesting that a copy of the debates of the Convention be forwarded to Ottawa for the use of the Parliament of the New Dominion.

The communication was read by the Secretary and was referred to the Committee on Contingent Expenses.

The PRESIDENT announced the reception of a communication from the Attorney-General, in response to a resolution of September 12, calling upon him to vacate fraudulent canal contracts.

The communication was read by the Secretary, and was referred to the Committee of the Whole.

Mr. FERRY, from the Committee on Contingent Expenses, submitted the following report:

The Committee on Contingent Expenses, to whom was referred the resolution offered by Mr. Graves, in the words following, to wit:

Resolved That a copy of the proceedings of this Convention be sent to the State Convention to be held in the State of Virginia, as a delegate of that Convention has requested the same,"

Respectfully report that they have duly considered the subject, and recommend that said resolution be adopted.

E. E. FERRY, *Chairman*.

The question was put on agreeing with the report of the committee, and it was declared carried.

Mr. SMITH—I call for the consideration of the resolution offered by me yesterday.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the committees whose reports have not yet been made to the Convention, be instructed to report on or before the 27th instant.

Mr. WEED—The resolution, by its terms, includes the Committee on Revision. I do not expect they can report by that time.

Mr. SMITH—I will propose, then, to have inserted in the resolution that the Committee on Revision be excepted.

Mr. SPENCER—As a member of one of those committees called upon to report, I desire to say, that I believe I am the only member of committee number 1 now present, and that but one other member of that committee has been here since the recent adjournment.

Mr. McDONALD—I am one of the members of the Committee on Salt. The chairman of that committee is absent, and he, I believe, has all the papers. I hardly understand how we can make our report until we hear from him. I do not know whether he has come back or not.

Mr. CURTIS—I would suggest to the gentleman that he might amend his resolution so that any committee not reporting at that time shall be discharged from the further consideration of the subject.

Mr. OPDYKE—As the chairman of the select Committee on Official Corruption, I have to say, that in consequence of the continued absence of some of the members of that committee, both before our adjournment and since, I doubt whether it will be ready to report at that time. It will report at the earliest possible moment.

Mr. SMITH—I do not desire to discuss this resolution, but merely wish to state that it must be obvious to every member of this Convention that if we are to act upon the reports of those committees who have not yet reported, we must have their reports before us at the earliest moment. Our time is very short. I do not think the absence of members of the committees should prevent the Convention from proceeding with its business. I have no objection to the amendment of the gentleman from Richmond [Mr. Curtis].

Mr. VAN CAMPEN—I move to lay the amendment of the gentleman from Richmond [Mr. Curtis] upon the table.

The question was put upon the motion of Mr. Van Campen and it was declared lost.

Mr. DUGANNE—I move an amendment, that in case committees cannot get together a sufficient number to make a majority report, those members who are here may be authorized to report for the committee.

The PRESIDENT—Does the gentleman offer that by way of amendment?

Mr. DUGANNE—Yes, sir.

The question was put on the amendment of Mr. Duganne, and it was declared carried.

The question recurred on the amendment of Mr. Curtis.

Mr. S. TOWNSEND—I would like to ask the gentleman from Fulton [Mr. Smith] what committees are in arrears?

Mr. SMITH—I do not know as I can name all; but the Committees on the Bill of Rights, on the Salt Springs, on Adulterated Liquors, the Committee on Corruption, and there may be some others which have not yet reported. These are all that occur to me at this moment.

Mr. VAN CAMPEN—I desire to state, as the chairman of the Committee on Indian Relations, that the terms to be reported by that committee have been generally agreed upon, but the committee are requested by some leading Indians to consult with the Hon. Mr. Church of this Convention, as to some of the provisions to be reported; and from his absence I do not believe the report can be fully completed by the 27th. I desire to consult him and the committee desire to consult him, as he is thoroughly acquainted with the wants of the reservation near his place of residence.

Mr. ALVORD—If the gentleman from Catauga [Mr. Van Campen] will permit me, I will say to him that Mr. Church will be here on the 25th unquestionably, as the finance article is made a special order for the 26th inst.

Mr. OPDYKE—Is an amendment in order?

The PRESIDENT—An amendment is in order.

Mr. OPDYKE—I move to amend by making it the 2d of December next. By that time I think the committee of which I am a member will be ready to report.

The question was put on the amendment of Mr. Opdyke, and it was declared carried.

The question recurred, and was then put on the amendment of Mr. Curtis, and it was declared carried.

The question recurred, and was then put on the resolution as amended, and it was declared adopted.

The PRESIDENT—Unfinished business is now in order. The pending question is on the motion of Mr. Bickford to supersede the motion for leave to sit again upon the report of the Committee upon the Powers and Duties of the Legislature by discharging the committee and referring the report to the Convention.

Mr. WEEK—I hope the gentleman from Jefferson [Mr. Bickford] will withdraw that motion. We can as well go into Committee of the Whole and dispose of this question now if we are ever to make a disposition of it.

Mr. BICKFORD—Partly on the suggestion of my friend I will withdraw the motion.

Mr. McDONALD—I renew the motion.

Mr. VEEDER—I call the ayes and noes.

Mr. McDONALD—I will withdraw the motion.

The question was then put on granting the committee leave to sit again on the report of the Committee on the Powers and Duties of the Legislature, and it was declared carried.

The Convention again resolved itself into Committee of the Whole upon the report of the Committee on the Powers and Duties of the Legislature, Mr. ANDREWS, of Onondaga, in the chair.

The Chairman announced the pending question to be on the substitute of Mr. Veeder, offered by way of amendment to the amendment offered by Mr. Duganne.

Mr. SMITH—I very much regretted last night that this question was thrust upon the Convention at that time, for the reasons which I had the honor then to state. The whole subject was under consideration by an able committee of this body, who would probably soon report upon the matter, and then we should be prepared to consider it in all its bearings. There is another reason why the subject should not be considered at the present stage of our proceedings. It trespasses upon the province of the Committee on Cities, whose report has not been considered. But the amendment has been offered and is insisted upon, and I propose to give a few reasons why I shall vote against it, and why I think all should do so, no matter what their views may be upon the merits of the Metropolitan Excise Law, against which the amendment is aimed. There is no disguising the fact that this amendment was conceived in a spirit of hostility to the Metropolitan Excise Act, as it is termed. It was avowed by the mover [Mr. Veeder], it was avowed by the gentleman from Richmond [Mr. Brooks] who spoke in its favor, and I believe it has been avowed by every gentleman who has favored its adoption. Now, I ask gentlemen to consider what would be the effect of the adoption of this provision. Since we commenced our sessions we have had petitions poured in upon us from all parts of the State, representing all shades of opinion upon the temperance question. In the first place we have petitions and memorials from "importers and

wholesale dealers, and brokers in wines, liquors, hops, malt, etc.," in the city of New York, praying that all restrictions shall be removed from their business. We have a memorial also from the "Liquor Dealers Association of the city of New York," praying that the Sunday liquor law may be rescinded, or rather, that a prohibition be incorporated in the Constitution against laws of that character. The Germans of New York have sent up their memorial protesting against the Sunday liquor law. We have before us another set of petitions from the temperance men of the State, praying that a prohibitory clause be inserted in the Constitution. We have another set of petitions from another class of temperance men in the State, praying that the subject of prohibition may be submitted to the people for their decision by a separate vote. And I think some other memorials from a different class have been sent in, although their particular character has escaped my recollection at this moment. Now, it is obvious that we cannot meet the views of all these classes, and a Constitution made to please any one class would inevitably lose the support of all the rest. If we adopt this amendment, and make it a part of the Constitution it will be distinctly understood by the friends of temperance and order in New York city, and throughout the State, that it is unfriendly to the Metropolitan Excise Law, and all excise legislation. They will so understand it, and no explanation that can be made, no ingenious theory that may be conceived or promulgated can avoid that result. The amendment, as I have stated, was offered in that spirit; and it will be so understood by all the people of New York. Its adoption would be hailed as a triumph by all who are in favor of the unrestricted sale of liquor in New York, and of removing all restraints against the violation of the Sabbath. It would be regarded by the friends of law and order, and the great body of temperance men throughout the State, as a defeat to their policy, and disastrous to their hopes. Now, without discussing the merits of the Metropolitan Excise Law, without attempting to decide whether that act is a wise or an unwise one, I ask, would it be wise for us who are seeking to make a good Constitution, and one that the people of the State will adopt, to incorporate into it a provision that would inevitably secure its defeat? I can assure gentlemen who go for the free sale of liquor that there are hosts of men in the State of New York who hold a different opinion upon the subject, and who will make their influence felt when they come to vote upon the adoption of the instrument we are framing. If we were compelled to settle the merits of the Metropolitan Excise Act, or to determine what kind of excise laws are demanded by the wants and wishes of the people, it would be a very different matter. But we have no such duty to perform. If we do not incorporate this provision into the Constitution we shall simply leave the subject where it has been left, to the control of the people, through the Legislature, according to the circumstances and wants of different localities and the demands of public opinion. We do not decide for or against any particular views upon this question, in regard to which men differ so

widely, but we leave it for the people, through the Legislature, to regulate as they may see fit. But if we now incorporate a provision into the Constitution which shall seem to favor the liquor interest, we thereby alienate all the temperance men of the State; and if, on the other hand, we incorporate a prohibitory clause we shall alienate all those who hold a different view upon that question. I again ask all those who are here honestly seeking to make a good Constitution, and one that shall be adopted by the people, would it be wise or reasonable for us to incorporate a provision in it that would inevitably cause its rejection when presented to the people? It seems to me that it would be neither wise nor reasonable. It seems to me, moreover, that if the friends of temperance are willing to leave this matter to be regulated hereafter by the Legislature, according to the demands of public opinion, that those who are in favor of "free rum" should not insist upon embodying their policy in the Constitution. But, sir, there is a fallacy in saying that this amendment is in spirit germane to the section under consideration. I do not say that it is not technically within the purview of this section or germane to it. The section treats of the powers and duties of the Legislature, of general and special legislation, and the amendment prohibits all special and local legislation in regard to the sale of liquors. It is, therefore, technically germane to the section, but not so in spirit. What is the scope and object of the section under consideration? It simply provides that, so far as the exercise of certain privileges and the enjoyment of certain franchises are concerned, they shall be exercised and enjoyed under general laws, and not by special statutes adapted only to certain localities, or made for the benefit of particular individuals or corporations. Take, if you please, the first subdivision of this section, in relation to granting divorces. It simply provides that the Legislature shall enact a general law by which any man or woman in the city of New York, in the city of Albany, or in the rural districts, who shall desire it and have good cause, may be divorced. A divorce is not forced upon any body; it is simply a general law, of which all persons may avail themselves in any part of the State. Take the next subdivision authorizing the sale, mortgage or leasing of the real property of minors. It provides for a general law by which minors who wish to lease, mortgage, or sell their property may do so under its general provisions. Or, take the case of changing the names of persons, which is required to be done under the provisions of a general law without a special act of the Legislature. So on through the whole category. All the provisions in this section simply relate to the exercise of certain rights and privileges, and the enjoyment of certain franchises under general laws. They are intended to secure to the citizen the enjoyment of rights and privileges, and to relieve the Legislature from special applications. But an excise law is a very different affair. It is operative immediately and directly upon all within the territory to which it applies. It is mandatory, it is prohibitory, it is penal; and when you insist that there shall be no special local legislation in

relation to this matter, you virtually say that there are no differences of circumstances and wants in the different localities of the State. Gentlemen who favor this amendment say, "If you give us an excise law in the city of New York, you shall take one in the country. If we are to have a board of police to regulate us in the city of New York, you shall have a board of police to regulate you in the country." Who does not know that there is a difference, and a wide difference in the circumstances, conditions and wants of the people of the city of New York and those of the rural districts. The gentleman from Richmond [Mr. E. Brooks], said last evening that he regarded the Metropolitan Excise Law as unjust and oppressive, that it discriminated invidiously against the people of his district. Does the gentleman mean to say that the great cities of New York and Brooklyn do not need different regulations from the rural districts? Why, every one knows that there is a difference that must be recognized in the laws that govern them. In the great city of New York congregate all people and nations, and kindreds and tongues. It is a great commercial metropolis, and it has been recognized from time immemorial that in such a city a different system of police regulation and a different system of local government are required from what are needed in the rural districts. And when you say that the Legislature shall in no case enact a law different in its application to the city of New York from its application in the rural districts, you make an unjust discrimination against the citizens of New York.

Mr. COLAHAN—If the gentleman will permit me, I would ask what the police regulation of the cities has to do with uniform and special legislation—the subject under consideration?

Mr. SMITH—It has this: It is claimed by the friends of this amendment that the excise law, as it now exists, known as the Metropolitan Excise Law, is different in its application to the city of New York from the general excise law applicable to the country; and it is said that this is wrong; that it is an invidious distinction; and hence it is designed by the friends of this amendment to inhibit the Legislature from making such distinctions. Now, sir, I had the impression last evening—although not very fresh from the reading of this statute—which impression I have since verified by a careful examination, that there is no difference in principle between the excise law applicable to the city of New York and that applicable to the country. The only difference is in the machinery of their enforcement, except that the liquor establishments in the metropolitan district are compelled to be closed at certain hours of the night, whereas those in the country are not. That is the only distinction I have been able to find between the two laws. In the cities of New York and Brooklyn the police have charge of the enforcement of the excise law; and it is because they have charge of it and efficiently execute it, that so much complaint is made about it, and not because it differs essentially from the law applicable to the country.

Mr. WEEKD—Is there not a very marked distinction in the amount of excise money to be paid?

Mr. SMITH—No, sir.

Mr. VEEDER—Will the gentleman allow me to call his attention—

Mr. SMITH—After I have answered the gentleman from Clinton [Mr. Weed], I will answer any other gentleman that I am able to answer.

Mr. DUGANNE—Will the gentleman from Fulton allow me to call his attention to the fact that the gas is escaping in the chamber?

Mr. SMITH—That is very appropriate to this amendment. [Laughter.] I was about to call the attention of the committee, in answer to the gentleman from Clinton [Mr. Weed], to the provision of the Revised Statutes applicable to the entire State. It is this—speaking of a license fee in towns and in incorporated villages: "Not less than thirty dollars, nor more than one hundred dollars, and in cities not less than thirty dollars, nor more than two hundred and fifty dollars." Now, I will call attention to the excise law applicable to the city of New York. "A license fee to be fixed in their discretion [the board], and it shall not be less than thirty dollars, nor more than two hundred and fifty dollars." It will be seen that the fee is the same as that prescribed by the Revised Statutes for cities.

Mr. VEEDER—If the gentleman will allow me, I wish to ask whether the law of 1836 does not extend to certain incorporated villages and towns, and if liquor dealers in those villages and towns in the counties of Richmond, Kings and Queens are not now compelled to pay a license fee of two hundred and fifty dollars, when, if they were under the old law of 1857, their license fee would be only one hundred dollars.

Mr. SMITH—I suppose that the Metropolitan Excise Law applies to all the cities and incorporated villages within the metropolitan district.

Mr. VEEDER—Except Westchester.

Mr. SMITH—Yes, with that exception, and in that respect there is a difference; but I am speaking of the provision generally, and, speaking generally, it is the same as the law which applies throughout the State. The metropolitan police system was adopted mainly for the benefit of large cities, and but few villages are included within its boundaries. As I have said, the only other difference that I perceive between the two laws is in the mode of their enforcement. The Revised Statutes have long provided against the selling of liquor on Sundays, and it is a penal offense in all other districts of the State, as well as in the metropolitan district; but the act applicable to the metropolitan district goes further, and provides that the board of police may enforce it and close up places where they retail spirits after a certain hour at night. It makes, however, an express exception in favor of hotels, and permits them to go on with their business at all times. If there are any other essential distinctions, I confess that I am unable to perceive them. These laws are, I repeat, the same in principle, and differ only in the modes of their enforcement. Now, I did not, and do not intend to go into a discussion at length on the merits of the Metropolitan Excise Law, or of any laws connected with this subject. I have attempted to show very briefly, that whatever our views on this question may be—and every man is entitled to his own

views, and the people of every section are entitled to their views in regard to it—whatever our views may be, it would be unwise to incorporate into the Constitution a provision which would alienate either the friends or the enemies of temperance. Let us leave that subject to be regulated in the sovereign wisdom of the Legislature, according to the wants of all the different localities in the State and the demands of public opinion. If you say the Legislature shall not make any distinctions on this subject, you say that they shall not have power to adapt their legislation to the wants and demands of the people. I desire to say, however, in this connection and in illustration of the question, that there seems to be a mistake in the minds of many men as to the grounds upon which excise laws are passed. Some gentlemen seem to think that they are designed for the reformation of men and for the purpose of making men better by the direct force of law. I do not understand excise laws to be based upon any such theory. Civil law does not deal with man as a member of God's moral government. It leaves him to answer in his moral conduct to God. We do not expect or assume to make men moral by legislation. What we do design and expect is to restrain them from injuring others, and protect them in the enjoyment of their rights and privileges. It is eminently right and proper that the traffic in liquors should be regulated upon the well known principle that no man has a right to so use his own as to injure his neighbor. If by the unrestricted sale of liquor, the peace, good order, and quiet of the community are endangered, or the rights of individuals destroyed, then society has a right to protect itself by law, and it is upon this principle that excise and prohibitory laws are passed. I may possess and I may take, if I please, poison; but I must not keep it exposed for sale without labeling it as poison, because it is a dangerous thing. I may carry on the business of butchering in the country, but I may not go into the city of New York, into the midst of her splendid palaces, and endanger the lives and the health of the community with my slaughter house, because society has a right to protect itself. From a very early period down to the present time, society has exercised the right of regulating the sale of intoxicating liquors. If I had the time I might go into some curious history upon this question. I will content myself however, by referring to one or two facts, merely by way of illustration. In England, before we as a nation, had an existence, in 1741 and in 1743, there were laws passed upon this subject, and the title of one was: "For repealing certain duties on spirituous liquors and licenses for retailing the same, and for laying other duties," etc. It was said that under this law, the retailers set up painted boards in public places inviting the people to be drunk at the small expense of one penny, and assuring them that they might be dead drunk for two pence, and have straw for nothing. [Laughter.] Coming down to the earliest times in our own colonial history, we find that this matter was regulated by law. In 1658, over two hundred years ago, in Massachusetts, we find a law with this preamble: "Forasmuch as there is a

necessary use of houses of common entertainment in every commonwealth, and of such as retail wine, beer and victuals, yet because there are so many abuses, both by persons entertaining, and by persons entertained, therefore it is ordered," etc. From a time "whereof the memory of man runneth not to the contrary," the necessity of some kind of laws regulating the sale of ardent spirits has been recognized. People have always differed and still differ as to the best course by which to regulate the traffic. Some say we must prohibit it altogether; others that we must have a judicious system of license; but all I contend for now is, that whatever our views on this question may be, we should not insist upon incorporating them into the Constitution, when to do so would deprive it of the support of large classes of citizens, and render no aid to the cause of temperance and good order. I understand that the Metropolitan Excise Law was passed at the request of a large portion of the most respectable people in the city of New York, without regard to party or sect. I understand, sir, that in two years it has saved to the city treasury \$2,500,000. I understand that it has shut up more than 3,000 grog shops, and made a quiet and peaceable Sabbath in New York; yet gentlemen come here and ask to have that law abrogated, and all similar laws inhibited by constitutional provision, desiring, or seeming to desire, to open wide the flood-gates, and turn New York into a saturnalia of disorder, debauchery, and riot. Now, I confess I do not believe in that. At the same time I do not wish to force my peculiar views into the Constitution. All I claim is, that the people shall be at liberty, through the Legislature, to pass such laws as experience shall indicate, and public opinion demand. And I insist that those who desire to remove all restraints upon the traffic, who demand that we shall reverse our policy, ignore the experiences and traditions of the past, and allow liquor to flow freely through the State, spreading desolation and death, shall not force their peculiar views into the Constitution. If they can go to the Legislature, and convince them that this Metropolitan Excise Law is a bad law, one which infringes the rights of the citizens of New York, they may procure its repeal. These, in brief, are my views upon this question. I do not care to enter upon an elaborate discussion of the merits or demerits of any system of excise, but I earnestly desire that our friends in this Convention who wish to make a good Constitution, and secure its adoption by the people, shall understand the wisdom and necessity of leaving the whole subject to be regulated by the Legislature.

Mr. DUGANNE—I deny the assumption of the gentleman who last addressed the committee, that this amendment was offered in the interest of those who favor a free traffic in rum. I assert that it was submitted wholly and solely in the interest of all the people of this State as a commonwealth, and that it involves only a single question for citizens of all localities of the State, whether they shall have a law general throughout the State or special for a part of the State. The gentleman has told us that those who are in favor of the Sabbath and of a proper excise law have

the right to make such laws for the city as well as for the country. What does this amendment propose to do? It proposes merely that the Legislature, as a Legislature, and representing all the people of the State, shall not go down into a single locality and there make a law appertaining to that locality alone, without reference to other localities in the State. It does not prevent any locality, or the authorities of any town, or any city, or any village, from making their own internal regulations regarding Sabbath observance or excise, or the traffic in any commodity within their own limits.

Mr. McDONALD—Will the gentleman allow me to ask a question? Where are the local authorities to get their power to make any local law, unless it be from the Legislature?

Mr. DUGANNE—They get their power, in all things which are not general, by another clause, which we have already adopted, and which provides that all matters not general, and not reserved for supervision by the Legislature, remain within the province of county or town regulations.

Mr. McDONALD—The question is this: where does any local legislature, city government or village government, get any power except by an act of the Legislature itself? And if you pass this provision, how can the Legislature give to the local authority any power which it has not itself?

Mr. DUGANNE—Where are they to get the power of changing the names of persons?

Mr. McDONALD—By law of the Legislature.

Mr. DUGANNE—The law of the Legislature can give them this power also in the same way.

Mr. COLAHAN—I understand that the prohibitions here are specially named, and that those that are not specially prohibited are permitted to the Legislature.

Mr. DUGANNE—Certainly, it is the understanding that all matters which the Legislature is specially prohibited from taking under its jurisdiction must naturally fall to the jurisdiction of the localities. I hold, sir, that the people of the State, by their Legislature—

Mr. McDONALD—The point I ask is this: have the local authorities any power whatever to pass any law or ordinance of any kind, except it be granted by the Legislature to that local power?

Mr. DUGANNE—They have not, but there is an implied power, which they possess by the Legislature being prohibited by the Constitution from regulating it, an implied power which they can exercise at any time. I hold, sir, that the people of the State have the right to establish any law that is not inconsistent with the national policy; but the people of the State must make laws equally operative in all parts of the State, or they break their mutual compact of equality. The people of the State may appoint all the judges, all the sheriffs, all the district attorneys, all the mayors, all the comptrollers of the State, or they may vest the power of such appointment in a Governor or a central council; but the people of the State cannot appoint the mayor or the comptroller, or the sheriff of a single county, and refrain from such appointment in other cities and other counties, unless they so appoint at the desire and with the consent of the city or

county involved; and this because a special law, or a special appointment, is an invasion of the principle of equality before the law, on which the commonwealth is founded. The legislative appointment of a civil officer in the city of New York, or the legislative enactment of an ordinance to govern the city of New York, asserts also the legislative right to appoint a like officer in Albany, Syracuse, Buffalo, and every other city of the State, and to enact a similar law for all those cities—or it is an invasion of that plain principle of the commonwealth which guarantees to municipalities a perfect equality before the law of the whole State. This is my plain principle. I stand upon the equality of all communities before the general law of the commonwealth. I stand upon the right of every individual citizen before the general law of the State, and I assert that it is an invasion of the principle of individual right, an invasion of the principle of municipal right, for the State, in its capacity as a commonwealth, to impose upon one locality any law or any system which is not equally shared by all other localities in all the State. That is my simple proposition, and I stand here—

Mr. BECKWITH—I would ask the gentleman if there are not a great many provisions in the charter of the city of New York applicable to that city, which are not applicable to the country and which the country cannot have the benefit of, and if incorporations have not other special advantages which the country has not?

Mr. DUGANNE—I admit it. The city possesses a charter. The State has a right to grant a charter to a corporation, to a city corporation, or any sort of a corporation; and that alienates from the State certain rights and authorities, and empowers the locality or corporation with such vested powers. The State alienates its own authority by its own free will, and thereby the corporation becomes possessed of what was originally the State right, and this with the consent of the whole commonwealth. It is under such laws that civic or metropolitan commissions are created; and for the very reason and the single reason that, at a certain time in the history of a city, the people of that city are discovered to be unequally protected in their personal and equal rights by the local authorities of such city. Why have commissions been imposed upon the city of New York? Is it because the city of New York is not equal to any other city in the State, or that it is not entitled to share in all the privileges or exemptions, or immunities of other cities? No, sir. It is because at a certain period in the history of our commonwealth, the city of New York, or the representative citizens of New York, became conscious that their city government was not protecting the rights and privileges of the community at large, and they appealed to the Legislature, and they brought proofs to the Legislature, to show that the commonwealth had neglected the city of New York. That is the reason why this extraordinary—I call it extraordinary—authority was given to boards of commissioners to govern certain interests in New York, and secure the health and order of that city. That is

the reason why, on conditions of extraordinary exigency, and for extraordinary reasons, the commonwealth has deemed it just, to impose State authority upon the city of New York. It was necessary to apply this rare and extensive power of the whole commonwealth specially to the city of New York, because that city was misgoverned by its local authorities. This is all that has ever been claimed by the friends of the measure. As a principle of republican government, I maintain that we depart from the natural structure of the commonwealth whenever we allow any portion of the State to be overborne unequally by either a law or an appointment, unless there may be good and sufficient reasons to show that such special authority is necessary in order to restore the equilibrium of the whole commonwealth and to make one community equally well governed with another in the State.

Mr. McDONALD—For the vote that I shall give upon this question, I have not heard the reasons stated. I do not stand here as an advocate of the metropolitan police law, nor of any other law whatever now existing or heretofore passed by the State of New York, and that is one mistake, I think, that is made in this discussion. So far it seems to be the desire of one party, and apparently consented to by the other party, to decide and discuss on this question in this Convention whether or no the present regulations in regard to the selling of liquor are right or wrong. I submit that is not the question before this Convention. If I understand the resolution, or rather the provision offered by the gentleman from Kings [Mr. Veeder], it is this: It is an absolute prohibition against the Legislature hereafter making any law in anywise different for any part of the State that is not equally applicable in all respects to all other parts of the State; or it is a prohibition that the Legislature, either by a direct law itself, or by authority granted to any incorporated body, be it city or village, shall not make any law in anywise different as regards the city of New York and the county of Livingston or any other county. I submit that is not good doctrine. Let us refer to the section under consideration. When we refer to this section we find that the Legislature is prohibited from granting special laws with regard to divorces, with regard to the changing of names, with regard to laying out or working highways, with regard to the granting of railroad charters, and with regard to releasing any right the State may have in land, with regard as to the particular subjects, and I submit that these same laws enacted in one part of the State ought to be enacted in all parts of the State. But with regard to the troublesome question of license, about which there has been more law making than upon any other subject I believe in the universe, with regard to that subject it does seem to me that it is no part of wisdom to declare that the law shall not be in any respect different when it relates to a city like New York from that relating to a county like Hamilton. This argument of the gentleman is good for nothing, for it abolishes the entire government of cities and villages throughout the State of New York. The city of New York is governed by all the laws of the

State of New York just as is the country. In addition to that it has all the machinery and all the laws of the city of New York. Now, if the argument of the gentlemen from the city of New York is good, the entire New York city government should be abolished because it is imposing on the residents of the city of New York laws which are not applicable to the country. That is the natural result of their argument, and to that I object. Now, with regard to the question of license—it does seem to me that there ought to be different laws in the city of New York from those operating in the county of Hamilton. They claim that by law they are compelled to do this and that, that the country is not obliged to do. I do not know whether that is right or wrong. That is entirely immaterial in this discussion. I am not here to decide that. I am here simply to say and vote that I am not so certain that different laws with regard to license should not be enforced, either by the local authority of the city of New York, or by the Legislature, directly upon that city than is enforced upon another part of the country, and hence I will not vote absolutely to prohibit the Legislature, as long as this Constitution, if it is adopted, shall last, from making any different law. It is submitted that the opportunities for selling and the temptations that surround the dense congregations of men in cities, are sufficient reasons for a different law with regard to license or prohibition. I am not in favor of inserting prohibition in the Constitution. I do not know that I am in favor of the metropolitan police law in all its provisions. I have never examined it enough. I do not know enough about it, and am not here to discuss it: but, as I said, it does seem to me that it is necessary that there should be a city government for other purposes, in addition to the usual State laws. So with regard to licenses—there is a necessity for different rules, whether they come from the city of New York as a corporation, or from the State of New York, through its Legislature. But this clause, as I understand it, will absolutely prohibit the Legislature from passing any law which shall be additional in the city of New York, the city of Albany, or in any city of the State, that is not equally applicable in all respects to the country. It does seem to me that this proposition cannot be established, at least that it is not so certain, fixed and determined in the minds of the Convention, that they will absolutely prohibit the Legislature from doing any such thing for twenty years, or for such length of time as this Constitution, if adopted, may be enforced. For that reason I am opposed to this amendment.

Mr. VEEDER—I will not occupy much time this morning. The gentleman from Fulton [Mr. Smith] has confidently asserted that the only difference this law of 1866, the excise law, which is enforced in New York, makes, is in the matter of enforcing this law, and in relation to the officers who shall enforce it. Now, sir, I do not think that at this stage of the motion the merits of the question are properly involved. In no possible way can we legitimately discuss the question of prohibition, of license law, or of prohibitory law. That question is not before the Convention. The

simple question is, shall any law, as passed by the Legislature, either regulating the traffic, the sale of liquors, or prohibiting the sale of liquors, be uniform in its character, in its provisions throughout the State? We have nothing to do with the question as to whether it is legitimate or proper to pass a prohibitory law, or whether it is right or proper to pass an excise law relating to the sale of liquors. Therefore, I cannot see for the life of me, how it can possibly affect even the delicate minds of gentlemen who are so much afraid that the temperance men may vote against this Constitution. It has been publicly proclaimed in this Convention, and it has been so voted by the majority, that the suffrage question should be submitted. They have no fears but what that question will be carried through; but when we come to legislate on subjects that legitimately belong to this section, as to the powers and duties of the Legislature, I am told by gentlemen on the other side that there is great danger that we may offend some parties and thus defeat the Constitution. There are many radical changes in the law of 1866 from the statute of 1857. I assert, without fear of contradiction, that under the law of 1857, no license whatever was required for the sale of ale or beer. It relates entirely to the sale of wines and spirituous liquors, and nowhere in the law of 1857 can I find a provision that prohibits the sale of wines and liquors on Sunday, provided the person has a license, or between the hours of 12 o'clock at night and sunrise. The law of 1866 requires a person to take out a license, and in the discretionary power left to the police board they have fixed the license at the highest amount.

Mr. SMITH—Does the gentleman mean to assert before this Convention that, under the law of 1857, the sale of any intoxicating drinks, whether beer, or ale, or any thing else, is not prohibited, and that it has not been decided by the courts that all intoxicating drinks are prohibited?

Mr. VEEDER—I say simply that under the statute of 1857 there never was any prohibition of the sale of beer in the city of New York or Kings. I understand it has been decided in regard to the sale of lager beer, particularly that it is not an intoxicating liquor.

Mr. SMITH—I desire to refer the gentleman to the decision of the court of appeals, and other courts of the State, in which it has been expressly declared that under this law every thing that is intoxicating is prohibited.

Mr. VEEDER—This statute of 1866 allows the discretionary power to charge a license fee not to exceed \$250; and the excise board have, in the exercise of that discretion, as I said, compelled every one who takes out a license to sell liquor, to pay a license fee of \$250, and in some instances where the party has simply taken out a beer license as it is called, they have charged \$100. That was simply to sell beer. Now the gentleman says that that law does not differ in reference to the amount of the license fee. I call the gentleman's attention to the fact that under the statute of 1857, the license fee in towns and incorporated villages would not exceed \$100. And that in

cities it might be placed at \$250. The gentleman says that that can not work any hardship with you because you are mostly within cities. Now I deny that. I assert that there are two entire counties, the county of Richmond and the county of Queens, included in the metropolitan police district, where there are villages and towns, and that they are obliged to pay a license fee of \$250. Besides that, sir, there are five towns in one county—in the county of Kings, outside of the city of Brooklyn—on roads leading to the sea-board, where the liquor dealer desiring to take out a license is made to pay precisely as large a license fee as the proprietor of the Fifth Avenue Hotel in the city of New York. The largest dealer in the city of New York pays \$250. You may go to the smallest hotel on the sea-shore and the proprietor has to pay a license fee of \$250 just as well. I submit that this is a hardship; it is wrong—radically wrong; and if gentlemen desire to pass a law of this character I say they shall pass it so that it shall affect their own counties and their own localities, and then take the responsibilities of that action. But when gentlemen come here from the interior of the State and compose a Legislature, they have no fear as to the result of a statute of that kind, because it affects a locality where they do not reside. They compose the majority who pass a statute of that kind. The statute is passed by the members from the country and from the western portion of the State, and it bears entirely upon southern portion of the State. I call the attention of the Convention to the record of 1866, when that bill was passed, and see how many members from the southern tier of counties voted for the bill.

Mr. POND—Do I understand the gentleman as maintaining that the law should exact the same fee for license from the Fifth Avenue Hotel as a small tavern on the sea-shore?

Mr. VERDER—No, sir; but if the gentleman will read the law he will understand that to be the law.

Mr. POND—My question is, are you in favor of having the same law apply to a small hotel on the seashore as to the Fifth Avenue Hotel.

Mr. VERDER—In reference to its provision, I am, decidedly; in reference to the amount of license I am not. I believe in regulating this license fee, perhaps with reference to the rental, or to the receipts, or the profits of the business the party may carry on. That is my own individual opinion.

Mr. POND—Do I understand the gentleman to argue that under his amendment he proposes to allow the Legislature to ask, or demand, or require a license fee of \$250 from the Fifth Avenue Hotel man, and only \$50 from the sea-shore man?

Mr. VERDER—Not at all, sir; but on the contrary I do not propose to go into that question at all. I propose to leave that to the Legislature. Whatever law the Legislature shall pass, leave it to the members of the Legislature to discuss that question; but whatever statute they shall pass, let it be uniform in its character with reference to the localities throughout the State; not that they should pass a special law with refer-

ence to New York, and another with reference to the balance of the State, but whatever prohibitory law they pass shall be uniform in its provisions throughout the State. I will now call the attention of the Convention to another wide difference in this law. The law of 1857 simply provides for the arrest of offenders without warrant, where they are actually discovered in the commission of an offense, but under no circumstances can the police officer invade the private premises of an individual and cause an arrest without warrant, unless the offense is committed in his presence. Under this statute the police authorities may, without warrant, without observing the commission of the offense, force their way into the residences of individuals to ascertain, if possible, if any provisions of the laws are being violated. A man's home is not his own; it is subject to the invasion of the police at any hour of the day. Now I say, if you desire to have a law of that kind operating in New York and Kings, let it operate in the residue of the State. I do not see any reason why the homes of the citizens of New York and Kings should be invaded by policemen, or by constables, or by sheriffs, without warrant, without the knowledge of the commission of an offense, any time of the day or night, when outside of New York and Kings, except the offense is committed in the presence of the officer, a man's home is sacred, secure and free from the invasion of the officer.

Mr. SMITH—I wish to inquire of the gentleman, as he thinks the excise law applicable to New York is unpalatable and oppressive, whether it would make it any more palatable if the same bitter pill were administered to somebody in the interior?

Mr. VERDER—The gentleman has already answered it by calling it a bitter pill. I think myself it is a very bitter pill.

Mr. SMITH—I am putting his own estimate upon it. I do not call it a bitter pill. If he calls it so, would it be any more palatable to him if somebody else were required to take a like bitter pill?

Mr. VERDER—I do not recollect using that expression. I used the gentleman's own words. But I am not here to discuss the merits of these pills as to the propriety of an excise law in New York, but I am here to say that, in my opinion, whatever law you shall pass shall be uniform throughout the State. I am simply pointing out the differences between these statutes, which gentlemen have confidently said did not exist. Now, sir, the gentleman says, leave this question to the Legislature; that is where it very properly belongs. Why not leave all these other questions to the Legislature? Why do you put in a provision here prohibiting the Legislature from granting a railroad franchise to any association or individuals? Why not leave that to the Legislature? This question of excise has been left to the Legislature. The Legislature last year were asked to repeal this law; were asked to make the law uniform; asked to amend the law and remove its obnoxious provisions, and they refused to do it. This question has been referred to it; and I submit that unless there is a provision in the Con-

stitution prohibiting this kind of special legislation, they will continue to pass laws of that character, that operate so harshly upon the citizens of New York.

Mr. McDONALD—Does the gentleman claim that the evils that are intended to be remedied, by the regulation of the license law, are as great in a farming community as they are in certain parts of the city of New York?

Mr. VEEDER—I deny, in the first place, that that is so; but I would say this in reply to the gentleman: that I do believe that, in proportion to the population, the moral condition of the people in the country is quite as bad as it is in the city. And I would call the attention of the gentleman to another fact that is very prevalent throughout the country, and will not be denied: that in almost all towns and villages a church is located, and that you invariably find on each side of the church a tavern. The churches sometimes do not have sheds themselves, and the people who attend the church drive down to the hotel sheds, and very many of them find their way into the hotels, and not into the church during the service.

Mr. McDONALD—Will the gentleman allow me to ask the question again? He seems to misunderstand it.

Mr. VEEDER—I thought I had answered the question. I do not desire to have it repeated.

The CHAIRMAN—The gentleman from Kings does not yield the floor.

Mr. LANDON—I would like to inquire whether the hotels of the city of New York are devoted to the same purpose?

Mr. VEEDER—I think quite as much, sir, from my personal experience. Now, sir, with reference to the license question. This law of 1866 provides that, in case a party shall have been convicted of an offense under the statute, it shall work a revocation of his license, absolutely and without further hearing. If it had stopped there perhaps the distinction or the difference would not have amounted to a great deal; but you will find by reference to the law of 1866, again, at section 22, it provides that whether a party has been convicted or not of an offense, so long as any person shall make a charge against the proprietor of a liquor store that he has violated any provision of the law, it allows the excise commissioners to cite the party to appear before them, and revoke his license if they deem it wise. Now, under the statute of 1867, the license could only be revoked after conviction, and it required the conviction to be certified to by the county clerk, and it also required the county judge, before the license was revoked, to cite the party to appear before him and show cause why his license should not be revoked. But this thing in New York is done very summarily. In many instances a license is revoked without the party being heard at all. The first intimation he gets is that his license is revoked.

Mr. SMITH—I am very sorry to interrupt the gentleman, but if I understand him, he misrepresents the matter. I wish to know whether he means to assert, and have it believed by this body, that they can revoke a license under this law without a hearing, and whether the law does

not, in express terms, provide for a hearing before the proper board?

Mr. COLAHAN—I know of my own knowledge in one case, in the city of Brooklyn, the license was revoked by the excise board without a hearing. The party was fined by one of these inferior courts; they revoked the license; they gave the party no hearing.

Mr. VEEDER—Section 18 provides that where a conviction is had, the party's license may be revoked without a hearing. He is not cited to appear before the police court, but, on the contrary, if a conviction is had, they may at once revoke his license. But I go further than that. The case I refer to is where there was no conviction. The license was revoked without notice and without hearing. The party obtained his license sometime in June. This was in August or September. After his license was revoked, they allowed him to take out a new license, provided he paid for the whole of it at that time. I cite this case because it came within my personal knowledge. They said, "We will give you a new license; we will not restore your old one; but you must forfeit the whole balance of the year, and pay \$250. The gentleman says that the law of 1866 does not change the character of the business of a hotel." Why, sir, it is only recently, within the last few months, that the excise board have permitted restaurants to keep open when they had a bar attached; and there are very many of them in the cities of New York and Brooklyn. They required the proprietors of restaurants to close up their establishments because they had a bar in them. In many cases in the city, in small places, a poor man has a liquor store in the front room, and back of that they have a room where they live, and their only means of communication is, perhaps, through the front room to the room where they live; or, perhaps, through a side door in the hall, first into the liquor store and then into their room. An arrest is made; the parties are brought into court and a complaint is lodged against them for not keeping their places effectually closed. No complaint whatever for any violation of the laws, for the sale of liquors, or for offering liquors for sale, but simply for not having, as the law provides, their places effectually closed. If this law is right in the city of New York, I say it is a proper law for all the rest of the State. I do not see why gentlemen hesitate to adopt this provision. I understand it is one of the cardinal principles of the Republican platform to modify laws and repeal statutes of this kind; and I do not see why they should break faith in this proposition now. A resolution of that kind, I believe, is incorporated in their platform, and I would like to see it carried out.

Mr. CURTIS—In moving yesterday evening that the present consideration of this question should be postponed until the coming in of the report of the Committee on Adulterated Liquors, I had no intention, sir, of avoiding the dilemma which the gentleman from Kings, [Mr. Veeder], seems to suppose he has provided for the Convention, in compelling it to vote directly and squarely for or against this proposition. My feeling in making the motion, was simply, that after

the report of that committee had been presented, we should be fully informed on the subject, and knowing what they intended to propose, could debate the matter more intelligibly. For I was assured that if they failed to make the identical proposition which is now made by the gentleman from Kings [Mr. Veeder], either that gentleman, or some other would submit it to the committee. For one, I propose to go straight up to the line which the gentleman has drawn, and to vote against his proposition; and that for a very simple reason. That reason has no relation to the merits of a prohibitory law, to the merits of a license law, or to the merits of the system of the perfectly free use of liquor as a beverage. Every law regulating the use of liquor as a beverage is a regulation of police. Its object is not moral reform, it is public order. It may be as great a sin—if sin at all it be—to drink a glass of whisky in the city of New York, as to drink it in the remotest interior point of the State. But the relation of the free use of liquor as a beverage in great centers of the population, to public order, is entirely different from the relations of the use of the same liquor elsewhere, where the population is sparse, or where other conditions may prevail. Now, the whole people of the State, the political society known as the State of New York, of which we are all members, are directly charged with the preservation of order, wherever their authority extends. It is for that people, acting through their Legislature, to determine what, if any, specific or general direction is necessary to keep the peace in any part of the State. If, in the judgment of the people, the general welfare demands that the use of liquors anywhere shall be restrained absolutely by law, they are perfectly competent to restrain it. If they think it is necessary that it shall be restrained by license they are competent so to license it. If they are of opinion that it is better for the public weal that there should be an unrestricted use of liquors, undoubtedly the people, who are the final depository of power, have the right so to decree. If, still further, in their judgment the peace of the State requires that the whole matter be subject to a general law, a general law they may rightfully pass. If they think that the condition of any part of the population, from its aggregation, or from whatever other cause, be such that it is necessary to pass a special law, a special law they may undoubtedly pass. The general principle of the amendment of the gentleman from Kings [Mr. Veeder] is undoubtedly correct. The people of this State, the people of any free republican community, will undoubtedly endeavor to administer their power in the form of general laws. But they are the final depository of power. They and they alone are the judges when they will depart from that fundamental principle. As Bacon says, "Let moderation be the rule; excess the exception." It is for this simple reason that this is a question of order merely, and a question changing its aspect from year to year—a question of experiment and experience, constantly growing under the attention which the question receives—that I cannot hesitate in voting against the proposition of the gentleman from Kings [Mr. Veeder]. I vote to leave it with the people of the State, in their

Legislature, and do not vote to bind the people of the State for twenty or a hundred years to a specific form of legislation; and I make the exception in favor of the proposition of the gentleman from Kings, and against the other propositions enumerated in this section, for the very plain reason that, in its nature, it essentially differs from every one of those specifications. And now, sir, I have one word to say in regard to some remarks that fell last evening from my friend and colleague from the county of Richmond [Mr. E. Brooks]. I, too, represent in part, by favor of the people of the State, the county which that gentleman also represents. It is my pleasure to bear willing testimony to the general truth of the tribute which he paid to the character of our fellow citizens in that county. I could not but remember, however, and with a certain feeling of regret, as the gentleman celebrated their character, that it is only a few years since, in a report made to the Legislature of this State, it appeared that the jails and poor-houses in that county were, perhaps, in as bad condition as any jails or poor-houses of the State. I mention the fact, not to the detriment of the county, for I am glad to say that those institutions are improving; and in this case I am free to say—for I do not argue that the *post hoc* is the *propter hoc*—it is not in consequence of the fact that the gentleman and I have since removed into that country; but undoubtedly at this moment the jails are stronger and the poor-houses are in better condition. I allude to the fact simply that it shall not be supposed in this Convention that the gentleman and I represent a constituency which is above the average. It is a fair, honest average of the constituency of the people of New York. But my special purpose is this: the gentleman intimated in his remarks that we in the county of Richmond suffered a peculiar indignity, or a peculiar misfortune in being in the metropolitan police district. I venture to say there is not one of the twenty-five thousand or thirty thousand inhabitants of the county of Richmond, who understands the question and who knows of what he speaks, who does not feel a hundred fold more secure both in the protection of his person and his property from the knowledge that he does live within the metropolitan police district, and this is a feeling which I have no doubt whatever is shared by every thinking person who lives within the limits of the metropolitan police district. There has been a great deal said upon this floor about the metropolitan police; I desire, and I thank my friend from Richmond [Mr. E. Brooks] for the opportunity of saying it—I desire, as I sit down, as a citizen of New York, enjoying the protection of that police which the State of New York has wisely and justly provided for the city and neighborhood of New York, to pay my tribute to the general high character, intelligence, constancy and fidelity of the metropolitan police.

Mr. E. BROOKS—I had not intended to take any further part in this discussion, and yet it is partly forced upon me by the remarks that the gentleman from Fulton [Mr. Smith] made this morning; and incidentally, by the remarks just made by my colleague. I wish to say in regard to the metropolitan police—and I appeal to the pub-

lic record for the truth of what I say—that there are as many crimes, as many cases of petty larceny and grand larceny committed, in the county of Richmond since the introduction of the city police there, as there were prior to the introduction of this police. And I mean to say, in addition, that it is extremely unjust to impose upon the people of that county a police regulating their local government, which is imposed upon them without their consent. And I mean to say in addition, that so far as the local authorities have ever given utterance to an opinion upon this subject, it has been, as my colleague must recollect, in the form of a solemn protest against the exercise of any such authority. And, in addition, I mean to say that it is, as a general principle and as a special principle, an unjust act on the part of the Legislature of this State to transfer from the city and county of New York a police which had its origin in the Legislature, which does not belong to the county, and against whose exercise of authority in that county the people have always complained. Simply this I mean to say in regard to that precise matter.

Mr. LEE—If I understand the gentleman, he says that there is as much crime now in his county as there was before the establishment of the metropolitan police. I would like to ask the gentleman whether, since the establishment of that police, there has been any increase in the population, and, if so, about how much?

Mr. E. BROOKS—There has not been a very large increase in the population of the county of Richmond. It numbers some twenty-eight thousand, and I suppose for the last ten years perhaps it has increased two or three thousand. The county of Richmond is composed of a people, as my colleague has very well said, as orderly, as sober, and as intelligent as the people of any other county of corresponding numbers in the State.

Mr. LEE—Will the gentleman allow me to ask him another question? I would merely ask if the gentleman was not a member of the Legislature at the time of the passage of the law creating the metropolitan police and whether he did not vote for that measure?

Mr. E. BROOKS—I think the gentleman will remember, and he was a colleague with me in the State Senate—that I spoke at some considerable length upon the bill which passed, and certainly against many provisions of that bill. It was a very different bill from the one now a law. But, sir, if my individual opinion is important on any subject relating to the cause of temperance, let me say for his information, and the information of any one that may desire it, that I believe in some excise law, and that it is proper to pass a law to punish intemperance, and I would punish the man who presents himself before the community in a state of intoxication, or in any thing approximating a state of intoxication. He becomes, in such case, a public nuisance in that way and ought to be under the regulation of law. And I would say in addition that I would hold any man selling liquor to an intoxicated person, or to a person habitually using and abusing the use of ardent spirits, amenable, and punish him also. I do not seek to screen intemperance, or apologize

for it in any form whatever. But what I do complain of is the disposition manifested by so many gentlemen on the other side of the chamber to discriminate by laws enacted for one part of the State, and laws enacted for the people in another part of the State. There is no justice in this discrimination. Gentlemen say—my friend on the right [Mr. Ballard] says—there is a great distinction between the charter of the city of New York and the charter granted to Albany and the charters of cities in other parts of the State. Grant it, but what has that to do with the question? We are here discussing questions which relate to general laws and to special laws, and those bearing upon the habits of the people in the sale of intoxicating drinks. If there is a disposition to indulge in the use of ardent spirits in the county of Fulton, or in the county of Cortland, why should not the inhabitants of these counties be under the same law as the people of the county of Richmond? I want the two gentlemen to answer me that question. You have your grocery stores there—you have your taverns there—your temptations to drink are held out there. Why should not the people of these counties be under the same regulation as the people of the county of Richmond?

Mr. SMITH—With the permission of the gentleman I will answer his question. If the gentleman has a good law in his county which promotes the peace and welfare of the county, and we have not, it strikes me that we are the ones to complain and not the gentleman from Richmond.

Mr. E. BROOKS—I do not look upon it in that light. This is not like many other laws. It relates to the sale of intoxicating drinks and malt liquors, if you please, and says that the law shall be uniform throughout the State. Now, you may impose upon this committee all the sophistry that is possible, and all the ingenuity that has been displayed here to-day and last evening, and when you address the moral sense of the people a large majority of them will say there is no justice in discriminating between people living in two parts of the State, and for the reason, as I have already said, that this law applies to certain things, certain habits of the people, to wit: the sale and use of intoxicating drinks. By and by we shall come to discuss the question of cities and the question of commissions in cities, and questions growing out of the habits of the people living on the sea-board and in the interior, and I shall try to demonstrate to this Convention, if ever that time comes, that as a whole the people of the sea-board are monstrously maligned and traduced by those living in the interior of the State; and when it comes to questions of practical beneficence there is just as much in the city, according to the population there, as there is in the interior of the State.

Mr. McDONALD—Does the gentleman from Richmond claim that identically the same laws are necessary for the regulation of the sale of intoxicating liquors in the city of New York as are necessary in the county of Richmond or any other part of the State?

Mr. E. BROOKS—Yes, sir; precisely; and for

this reason: because if you in the interior, who claim to have more purity than the people of the sea-board—I judge from inference and intimation rather than direct words—because if you, living in the interior, have less temptation than we do, who live in the city—having, if you please, a less number of people, and less inclination to indulge in these various temptations, can bear a law of self restraint, we can bear it on the sea-board; and if, on the other hand, you impose these severe restrictions upon us, you who live in the interior can well apply them to your own population.

Mr. McDONALD—If the gentleman will permit, I wish to say here that I do not claim here that the people of the country are any better than the people of the city would be under the same circumstances, nor that the people of the city are any less moral or less exemplary than the people of the country would be if they were placed in the same circumstances.

Mr. E. BROOKS—The tendency of the discussion has been entirely in the direction of the enormous vice of intemperance in the city of New York. My friend from Fulton [Mr. Smith], dwelling upon that at length, showed how much money had been saved by this excise law, how many grog-shops had been closed under this excise law—always drawing a parallel between the city and the country. I protest against this. I have nothing to say against the country. It has great advantages—perhaps it has less temptations; but I do mean to say this, that man for man, there is as much vice in the country as there is in the city. I can demonstrate this I think from the statistics which may be presented from the official records, and from your reports on minors, lunatics and paupers in the State. Now, will the Secretary please read the amendment.

The SECRETARY read the amendment, as follows:

Add after line fourteen the following: "regulating or prohibiting the sale of wines, liquors, ales and beer."

Mr. E. BROOKS—Now, Mr. Chairman, it will be seen that if we strip this amendment of all extraneous matter, that it simply asks this Convention to give the Legislature power to enact a general law which shall reach all parts of the State and operate upon every citizen alike, and that I maintain is but justice.

Mr. DUGANNE—I did not intend to occupy any more of the time of the committee upon this subject, but I feel constrained to reply to what I regard as the sophistical argument of the gentleman from Richmond [Mr. Curtis], who preceded the last gentleman. The gentleman tells us, and in this I agree with him perfectly, that it is competent for the State to interpose its power at any time in a special act to reach and govern the question of public order. I admit it, and I believe, also, that it is necessary at times to interpose such special legislation to reach special emergencies. But I contend that the question of public order has been overreached by this excise law, or by any law bearing partially upon the city of New York. What is public order? It is obedience to the ordinances relating to public morals and social and political government. Has order been infringed, has public peace been jeopardized, I would ask, by

the acts of those citizens of New York who are in the habit of indulging in beverages of malt liquors or light wines? Will it be contended by the police of the city of New York that public order has ever been flagrantly invaded by that portion of the community known to embrace consumers of those light beverages? If public morals are jeopardized at any time it is through those classes that habitually indulge in strong spirituous liquors. I agree perfectly with the gentleman from Richmond [Mr. Curtis] who lately spoke, that it is necessary to have some law to cover exigencies which may arise from the infringement of public order by overt acts. I agree that when a citizen is found intoxicated in the streets, or is known to be violating the public ordinances, or jeopardizing social order in or out of his family, he should become the subject of legislation and of punishment for his overt acts that have invaded the public peace or safety. If the tendency of the use of strong or spirituous liquors is to place men in such positions and conditions, that they must inevitably violate public order then I hold that some absolute restriction is necessary to be enforced as a preventive of disorder. But I maintain that the use of malt liquors or light wines has never, *per se*, invaded public order in the cities, or in the country. There is a large class of our community in the city of New York comprising individuals who have been accustomed to the use of those beverages from their infancy, persons who are known to be order-loving, law-abiding citizens—I mean the German population of the great metropolis. These people have their social customs dear to them for their association with the fatherland and with their homes and pleasures in childhood. These people are in the habit of indulging in light beverages only, and I challenge the police to bring forward one in a hundred cases of arrest where the use of such beverages has caused the breaking of the public peace or a disturbance of the Christian Sabbath by overt acts. Seventenths of the population of New York are composed of laboring people who dwell in what are known as tenement houses. Throughout the week those poor toilers, during the summer blooms or winter snows, are obliged to live in those wretched receptacles of miserable humanity, those packing houses which are not worthy the name of homes for human beings. Night and day throughout the week they are compelled to breathe the fetid air and suffer by the vile associations of these places. On a certain day in the week, according to the custom of their fatherland, the German population of New York escape from such mis-called homes and seek society and recreation in social intercourse, in what they term their "gardens." I contend that at no time have these social meetings or gatherings of the German population been productive of public disorder. At no time have these German people, who repair with their families, their wives and little children, to enjoy, in their own way, an hour or two upon certain days of leisure, been known as breakers of the public peace. I assert, therefore, that these laws to prohibit the sale of lager beer or light wines are not required in the interest of society and do not advance the cause of sobriety and temperance, that they are

of questionable utility and positive hardship, and that, bearing as they do partially upon the city of New York, they are neither just, wise nor politic. And now, sir, in response to the rather gratuitous but enthusiastic defense which the gentleman from Richmond [Mr. Curtis] has made of our metropolitan police, let me say, that I am willing to agree with him in the main that the force is unquestionably necessary for the maintenance of order in the great city of New York; that we are indebted to it for our immunity from a great many crimes and a great deal of public disorder. But I apprehend that the use to which that police has been put within the last few years under the action of the excise law and kindred laws, has demoralized it to such a degree that an American citizen can no longer feel much pride in it. I fear that too much authority, and the arbitrary exercise of it, has demoralized our police board and its surroundings. I fear that the extraordinary means and methods adopted for the enforcement of metropolitan laws have contributed to degrade American citizens, members of the force, to the level of public and private spies. Sir, in the city of Paris there is one creature of the law hardly recognized as a man, one creature despised of all other creatures, the butt of public ridicule, the mark of public derision everywhere, so that you can stigmatize a Frenchman by no viler epithet, than to say that he is a *mouchard*. This *mouchard*, sir, is one of those wretched instruments of despotic power, that, at the beck of the police, and under the authority of some Tallyrand or Fouché, is employed to watch and report every act and word of the people; to wait at corners, to listen under eaves, to sneak into domiciles, and convey every whisper which may import disaffection or disquiet in the populace. The spy, the *mouchard* is, in effect, the lowest myrmidon of law, as well as the vilest social being known to the French vocabulary of offensive nicknames. Sir, the tendency of our metropolitan police orders is to manufacture two thousand *mouchards* out of manly and open American citizens, to create two thousand private spies, whose work it shall be to creep into back kitchens, to stop little children as they run upon errands, to invade the privacy of domestic life, and to become, as a consequence, cursed and detested by entire classes of our citizens, instead of earning, as they might and should, the intelligent respect and confidence of the people, as guardians of the public safety. Sir, I maintain that the police force is already very largely demoralized throughout the metropolitan district. The operation of the excise law, especially as enforced at present, has so degraded it, that we can no longer feel the pride in its integrity which ought always to be reposed in those who keep watch and ward of the great city of New York. We have, unfortunately, too much evidence of this demoralization in the official report of the metropolitan police just laid before the Convention. I find in this report that, out of an annual average of two thousand men, or, perhaps, only fifteen hundred men, from the year 1858 to the year 1867, there has been, according to the figures of the commissioners, a total of thirty-four thousand two hundred and twenty-

three complaints and judgments against members of the police. During the same period there have been dismissed from the department *eleven hundred and thirty* men; sixteen thousand six hundred and sixty-four have been fined; and eight thousand eight hundred and sixty-three reprimanded. And for what offenses, sir, have many of these complaints and judgments been made? I am ashamed to say that some most reprehensible crimes and disorders are enumerated in the catalogue. Not only neglect of duty, not only offenses which come under the head of violating police regulations, but overt acts and crimes; and some of them of such a description that I would not here read or repeat their nomenclature. Is such, sir, to be the record of our model American police system? Yet it is this very system which has reduced American citizens to the vocation of spies, deprived them of their native manhood and made them dependent upon the beck and nod of tyrannous and arbitrary authority, at the expense of their own self-approval and self-respect. It is the spy system, I apprehend, that demoralizes, day by day, our effective and respectable metropolitan police. I admit that we cannot do without their protection to our firesides, but I believe that under the operation of just and equal laws we would be spared such a record of offenses committed by the police, and would really create a force of public guardians, of whom New York city might be proud, and of whom the State at large might be proud. And so I leave, for the present, our metropolitan police.

Mr. SMITH—I would inquire whether these policemen are not generally from New York city. I merely wish to know that we may judge what sort of population there is in New York.

Mr. DUGANNE—I suppose the appointments in the city are made through the interest of public men. I do not know whether those public men reside in New York mainly or in the rural districts. I only know that an appointment on the police is a subject of patronage, and I may as well remark here, what I believe is generally conceded, that either because, or in spite, of their demoralization as a force, and because or in spite of the fact that these men are regulated by a rod of iron in their relations to the commissioners, the majority, or a very large minority of the police at the last election, voted in favor of the candidates who were elected to the State offices. So much, sir, in regard to the alleged partisanship of the police.

Mr. COLAHAN—I will inform the gentleman that a member of the metropolitan police was sent from Yates county the other day.

Mr. DUGANNE—I have only this to say that I regard it, as I said in the first place, a sophistical argument to assert that the amendment relates merely to a question of order. It may relate to the question of order; but only on the ground that a sale and use of food, light wines and malt liquors, is productive of public disorder. This is the original proposition to which I am speaking, that it is unnecessary to make special or local laws to prevent the use of these articles of consumption. I hold that such use does not contribute to social or civil disorders, and to class

such use with an indulgence in strong liquors, under the general plea of police regulations, and the preservation of public order, is in my opinion mere sophistry. If, as is generally admitted, the use of light wines, and malt liquors does not induce breaches of the public peace, and that it is mainly, if not wholly, the indulgence in stronger beverages which provokes disorders, then I contend the argument of the gentleman from Richmond [Mr. Curtis], falls to the ground. I have but a few more words to say. I take upon myself the responsibility of this amendment. If the friends of the gentleman who declared, that its adoption would defeat the Constitution, are numerous enough to bring about such a result, I am still willing to submit my proposition to its chances before the people. I am willing that the Constitution should be measured with such an amendment in it, because I believe the proposition is right, and the amendment founded on principles of justice, but if any class of politicians and any faction of voters set themselves against it to defeat it, I would rather be in the minority on an issue of equality and justice, than to be in the majority against such an issue.

Mr. MERRITT—I would like to ask the gentleman whether he would oppose a Constitution which in his judgment was right and proper, although some provision might not be in it which could otherwise be remedied by the Legislature.

Mr. DUGANNE—No, sir; I did not say I would do it. I only took the assertion of the gentleman who said this Constitution would be defeated if we put in this amendment.

Mr. MERRITT—I understood the gentleman to say he wanted it defeated.

Mr. DUGANNE—I said I would be willing to put the amendment in and take the consequences, even in face of the threat of the gentleman that it would be defeated by his friends. If it be introduced into this Constitution, and the Constitution shall be defeated because it is in, then I shall know very well what defeated the republican party in the last campaign. I shall know the class of men who regard the question of local legislation, or local police, if you so call it, superior to principles which they pretend to regard as the safeguard of republican institutions. That is the previous question, sir. We denounce our German fellow citizens because they have regarded the question vital to them in their social life, and as paramount to questions which are connected with our national politics. How can we blame these foreign citizens, wedded to their own customs and prejudices, when it is declared upon this floor that American citizens in the rural districts will defeat the Constitution because we do not place within it some provision that may carry out their peculiar theories in regard to order and morals?

Mr. SMITH—I understand the gentleman to state my position in this way: that unless the peculiar views of certain individuals in the country shall be incorporated in the Constitution they will defeat its adoption. Now, I expressly disavowed that, and stated that no party ought to insist upon incorporating their peculiar views upon

this subject in the Constitution, but that the whole matter should be left to the Legislature.

Mr. DUGANNE—The gentleman distinctly stated that if this amendment should be adopted the Constitution would be defeated.

Mr. SMITH—Certainly; I said it would, because it was incorporating the peculiar views of the liquor men in the Constitution, and therefore it would raise alarm and create opposition among the temperance men. But I distinctly said that no classes of men holding peculiar views should insist upon putting their peculiar views into the Constitution. The friends of liquor and the friends of temperance should leave it all to the Legislature.

Mr. DUGANNE—I deny that I am a friend of liquor, or that I speak for the friends of liquor. If I had my will to-day, I would blot from our language the very name of alcohol. I would, if it were in my power, prohibit forever the use of intoxicating drinks. But, sir, I know that human nature will not submit to it. I am not so narrow or so bigoted in my views that I shall attempt to subvert the life and habits of other men in order to carry out my own ideas of social propriety. If we could abolish intoxicating drinks to-morrow, if we could prohibit their use, if we could make a Japanese edict to prevent all traffic in liquor, you would find something taking the place of alcoholic drinks immediately in the shape of narcotics or the vile stimulants of opium, hasheesh, and kindred drugs far more vitiating and debasing to the people than the use of intoxicating beverages. This fact is already proven by the enormous consumption and use of these stupefying drugs, and the steady increase of their consumption in those localities where prohibitory laws have been enforced. I need only refer to trade statistics to substantiate what I say. And here in reply to the gentleman who intimated that I spoke for the friends of liquor, let me repeat once for all, that I do not regard this amendment as a mere question of material indulgence, or an abstract issue in regard to beverages, their sale or use. The real question to use a homely simile, is whether "what is sauce for the goose shall be sauce for the gander." It is simply a question whether a police regulation to prevent a man from becoming intoxicated in the city of New York, and thereby, perhaps, preventing a murder or other crime, shall not equally apply to the prevention of a man's becoming intoxicated in the rural districts, and thereby preventing a similar crime there. The friends of temperance tell you that they seek to prevent misery and crime. If access to a glass of liquor at any time in the city of New York, will so change the condition of a morally responsible being as to cause him to commit crime, why will not a like access to the same pernicious beverage in a rural town have the effect to provoke like crime, and why should not general laws apply to it? It is because of the inequality of any and all laws bearing upon one place and not on another, that we wish all these special enactments to be done away with. If the people of a particular county desire to prohibit the use or the sale of intoxicating liquors, let them do it under its own county authority. If another county elects to allow free traffic in rum, let that county enjoy its

choice until such time as its good citizens learn that a free traffic in rum is provocative of public disorder, and then let the State, in its capacity as general care-taker, come in and touch the evil causes as they exist, and not imagine evil causes where they do not exist.

Mr. WEED—I propose to vote for the amendment of the gentleman from Kings [Mr. Veeder], and, if that is voted down, for the amendment of the gentleman from New York [Mr. Duganne]. As it is incumbent on any one, it seems to me, from the remarks of the gentleman from Richmond [Mr. Curtis], and the gentleman from Clinton, [Mr. Beckwith], upon the other side of the house, to explain the reason for such a vote, for fear that they may be classed with those who are not the friends of good order, I propose briefly to state my position in reference to this question. In the first place there is no gentleman upon the floor of this house, that I know of, who is opposed to a proper excise law, who is opposed to proper regulations of traffic in ardent spirits, who is opposed to good order and proper means to prevent disorder in the sale of intoxicating liquors. Certainly, I am not one of that kind. I know of no man upon this floor, who has advocated this amendment, who is. I desire, as well as the gentleman from Clinton [Mr. Beckwith], and the gentleman from Richmond [Mr. Curtis], good order. The simple difference between my position and that of others is that we do not arrogate to ourselves the only stand-point from which we can look at good order.

Mr. CURTIS—Will the gentleman give way to me a moment?

Mr. WEED—Certainly.

Mr. CURTIS—What I intended to say was this, with regard to that point: that if it should be found, by experience, that it was necessary for the preservation of good order there should be a prohibitory liquor law, or a license law, it is perfectly competent for the people of the State, in the Legislature, to pass such a law, and to make it general or special as they choose. For myself, I expressed no opinion.

Mr. WEED—I may have misunderstood the gentleman from Richmond [Mr. Curtis], in speaking of this matter. I may have identified him more particularly with the party of which he is an honored representative. That party arrogate to themselves all the morality in the land, if I recollect aright, from their course in the last few years. That is my impression; and I may, in referring to this matter, have mixed him with the party. I say, therefore, Mr. Chairman, that I am not in any way against regulating the sale of liquor; and I say, at the same time, that I am in favor of an excise law throughout the whole State. I am opposed to making an excise law in this State for certain portions of it as a political machine. I state here that the excise law in the metropolitan district was conceived and passed as a political machine, and is to-day avowed as such a machine.

A DELEGATE—It gives you votes.

Mr. WEED—It does give us votes; thank God, it does give us votes, and it will give us votes as long as you keep it up. It simply demonstrates the old adage that

"The best laid plans of mice and men
Gang aft times aglee."

[Laughter.] It was passed at a political caucus was run through the Legislature of the State as a political machine, and placed in the hands of a political commission. I say, therefore, I am opposed to any such performance, to any such laws—local laws—for the regulating of the sale of liquor, or any other article, by either party, for I expect that if we do not put this into the Constitution, some Democrats (for it certainly looks as if they were to have the power) will pass laws through the Legislature regulating the trade and traffic in the country for the purpose of getting votes, and I fear if they do, it will have the same disastrous effect upon them that it had upon the other party in regulating it in New York. Now, with reference to the metropolitan police of the city of New York; I say that that police have been improperly dragged into this discussion. It has no part and place in this discussion and should not have. At the same time, in answer to the eulogy passed upon that police by the gentleman from Richmond [Mr. Curtis] I state what I believe to be the fact when I reiterate the statement that it is a political machine. It is run for political purposes. The members of that police are selected from different portions of the State by politicians. And for that reason I say it is wrong; I say the whole system is wrong, and that the putting the power into the hands of the police to regulate the sale of liquor is in violation of good order, is violation of good government. For that reason the people of the city of New York have risen up in their might against it. I simply wish to reiterate the statement that I support this amendment because I believe an excise law to regulate the sale of liquor throughout the whole State can be passed and should be passed, applicable alike to all portions of the State. I am surprised to hear that my honorable democratic friend from Cayuga [Mr. Rathbun] [Laughter] is not out in another speech upon the question of doing away with local laws that control localities when they might be controlled by general laws. Can it be that the difference between this and the position he took yesterday was that one has patronage in a party sense and the other cannot be made so? Certainly, it seems to me, they stand upon the same principle, the same footing, and that if we are opposed to local legislation we should not violate the principle by legislating for some particular locality because it is of a certain political stripe; and I ask gentlemen to look back and see if there has ever been a commission placed upon a locality that was republican. Is it because this has a political bearing that the gentleman from Cayuga [Mr. Rathbun], and other gentlemen who are so opposed to local legislation, have not come out in favor of the amendment of the gentleman from New York [Mr. Duganne]?

Mr. ALVORD—I do not desire to make a speech, but desire that the gentleman from Kings [Mr. Veeder] and the gentleman from New York [Mr. Duganne] should consent to have the proposition put in this form, if it will meet the approbation of the committee: "regulating or prohibiting the sale of wines, liquors, ales and beer, ex-

cepting that they may pass laws on this subject which shall apply equally to all cities, or all villages, or all incorporated towns in the State."

Mr. VEEDER—So far as I am concerned sir, I cannot accede to the proposition of the gentleman from Onondaga [Mr. Alvord]. I desire that whatever law may be passed in reference to the sale of liquors shall be uniform throughout the State. I am unable to discover any reason why we should discriminate between cities and towns, or between towns and villages. Whatever excise law is necessary for New York is, in my judgment, necessary also for Schoharie; and whatever law is necessary for Schoharie is necessary for Syracuse.

Mr. M. I. TOWNSEND—I would like to ask the gentleman from Kings [Mr. Veeder], if he believes it would be proper to charge a man the same amount of license fee in the county of Schoharie that you would charge the keeper of a hotel in the city of New York?

Mr. VEEDER—I have already answered that question once.

Mr. M. I. TOWNSEND—I did not hear the gentleman's answer.

Mr. VEEDER—I say that they can regulate the fee by the rental of the establishment or by the receipts; but that was not done by the law of 1866, for under that law a man keeping a little bar down at Canarsie, on Long Island, had to pay a license fee of two hundred and fifty dollars, and a hotel in the city of New York had to pay only the same license fee.

Mr. COLAHAN—I would like to ask the gentleman from Onondaga [Mr. Alvord], what he means by "incorporated towns," what incorporated towns, and also what proportion of the State, so far as the number of inhabitants are concerned, would be left unembraced in his provision after it had excluded cities, villages and incorporated towns?

Mr. ALVORD—I will explain what I desire to convey by this amendment; it is this: that while general laws, in the general acceptance of the term, are laws that apply to all the inhabitants of the State, yet they can be made more specific, in reference to a peculiar state of population, by this amendment proposed by myself. The aggregation of populations in cities is, of course, larger and more dense than in villages, and in villages larger and more dense than in rural districts, and certain arrangements in reference to excise laws and to the enforcement of penalties are necessary in the one case which are not necessary in the other.

Mr. COLAHAN—I ask the gentleman to read his proposition.

Mr. ALVORD—I may not have read it correctly before. It is this: "regulating or prohibiting the sale of wines, ales and beer, except that they may pass laws on this subject which shall apply equally to all cities, or to all villages, or to all towns in the State."

Mr. VEEDER—I would suggest to the gentleman from Onondaga [Mr. Alvord] that the objection which he makes to a general law can be met in this way. On every statute passed by the Legislature in reference to the sale of liquors, let them leave it to the local authorities to regulate

the license fees and the manner in which the sale of liquor shall be conducted, and then there will be no trouble about it at all.

Mr. LANDON—I shall vote against the proposition of the gentleman from Kings [Mr. Veeder]. I shall not do so, however, because I wish to be considered as indorsing any provision of the law which makes it wrong to drink liquor in some places and right to drink it in others. I believe that when any thing is wrong in itself, intrinsically wrong, it is wrong in all places; and I do not believe in that sort of law which makes it right to do a thing in one place, and wrong to do it in another. But I shall vote against this proposition because it is a dangerous one to incorporate in the Constitution. I shall vote against it for the same reason that I have voted against a great many propositions here, because it is legislative and not constitutional in its character. If we were a Legislature and were enacting a law in regard to this matter, I might be inclined to go with the gentleman from Kings [Mr. Veeder], because if we found we had made a mistake we could correct it the next year; but if in our present capacity we make a mistake, and this Constitution be adopted, it will be a mistake which will stand, probably, for twenty years. The gentleman from Kings [Mr. Veeder] presses in aid of his proposition a principle which he is not entitled to. He says that laws ought to be uniform in their application. So do I, sir. These laws, as I understand them, are uniform in their application—they are uniform in the cities to which they apply. The real thing which I suspect the gentleman meant to say is, that these laws should be universal in their application. Now, I can readily conceive that we ought not to put into the Constitution a provision that all laws of a police character shall be universal in their application throughout the State. But wherever we do apply a law let it be uniform in its provisions. Now, if we put this provision in the Constitution, it will strike further than the gentleman from Kings intends. It will prevent the cities in the State from passing such local police regulations as they may desire in regard to the sale of liquor. The little city in which I reside is authorized by the Legislature to pass such police regulations in regard to the sale of intoxicating liquors as the common council may think advisable; we have these regulations, and we enforce them, and it very rarely happens that any man is punished in my city for a violation of the excise law of the State, as it appears in the Session Laws, but he is punished for the violation of the ordinances of the city, which the Legislature has authorized us to enact. Now, if we deny to the Legislature the power to pass these special laws, we deny to them the power to confer upon the cities of this State the right to enforce such local police regulations as they may deem necessary. So I think we ought to pass by the question whether the metropolitan excise law is right or wrong, pass by the question whether there ought to be any law for the sale of liquor or beer in the city of New York, that does not exist also in the North Woods, and come down to the constitutional question whether it is safe to say that there shall be no special provision as to the sale of liquors, and that all pro-

visions in regard to that matter shall be universal in their character. I think a provision so broad is altogether too dangerous, and that we are not wise if we adopt it.

Mr. CONGER—It will be remembered that when we were discussing the question of a general law, a uniform registry law for the State, I submitted a proposition that the law in regard to registration should be uniform for cities, uniform for towns, and uniform for villages. My honorable friend from Onondaga [Mr. Alvord], who has submitted a proposition of that character in regard to the question of excise, will doubtless remember that he voted against the proposition which I submitted in regard to uniformity on the subject of registration. I would like to inquire of the gentleman now, on what principle he can maintain propriety and uniformity of the laws in the one case and not in the other. In my own mind I can see no reason why, in reference to the duty that we feel obligatory upon us to enact general laws for the general good, we should make a distinction in favor of an excise law as against provisions for the registration of voters.

Mr. M. I. TOWNSEND—I would vote for the proposition of the gentleman from Kings [Mr. Veeder], if I was certain that it would be practicable under it to legislate so as to make proper discriminations in regard to the amount to be paid for licenses in different localities. I think I like the idea contained in his amendment a good deal better, in reality, than he does. I think I like general legislation, while the gentleman from Kings allows it to crop out that he does not want any legislation at all for the city of New York, or for that locality, but to leave the local authorities to carry out whatever may happen to be the local whim of the accidental majority there.

Mr. VEEDER—Does the gentleman think the majority in New York last fall was accidental? [Laughter.]

Mr. M. I. TOWNSEND—No, not accidental by any means, but I believe it will be the result of an accident whether Hoffman or Fernando Wood shall be mayor next month, and the Lord only knows who will be benefited by the accident. [Laughter.]

Mr. WEED—May I ask the gentlemen if they have no anticipation of Mr. Darling being elected? [Laughter.]

Mr. M. I. TOWNSEND—Not the least in the world. I think I know the moral tone of the city of New York too well to believe that any Republican would be elected in that city—I mean any Republican worthy of the name. [Laughter.] Now I say again that I am willing myself to share the burden necessarily put on any portion of the State or that shall be deemed necessary for the preservation of the public peace in the city of New York. I believe it to be the duty of the State, whether represented in Constitutional Convention or in the Legislature to take care of the public peace all over the State; and I do not think that the different localities of the State are as diverse in this respect as some gentlemen seem to suppose. The gentleman from Richmond and the gentleman from Kings, and the gentleman from New York are finding fault with

the police in the metropolitan district. In that, sir they are not different from the other parts of the State. We have a great many people in every part of the State, who are always finding fault with the police, who have all their avocations and employments interfered with by the police. [Laughter]. I think you will find it everywhere true, that "None felt the halter draw with good opinion of the law." In all parts of the State, the people are much more alike than the gentlemen suppose. The police stand in the way of a great many things in this world; and in that respect we are very much alike all over the State, and I am willing myself to submit to uniform laws. I feel called upon to vote against the proposition of the gentleman from Kings [Mr. Veeder], because I think we can find a better plan and one entirely consistent with the views of the gentleman from Rockland [Mr. Conger], (and I am happy to be able to act with him now, as I did in 1848). [Laughter.] I say I think we can find a better plan, and can make this law uniform in cities, uniform in villages, and uniform in incorporated country towns. I shall vote against this proposition, and I shall vote against it, believing that the community have not only the right, but the duty to protect themselves from the evils that may result from unrestricted traffic in liquors that intoxicate, because, under their influence, men become creatures, that cannot control themselves, and unless there be some regulation, some control, some restriction in this matter, we never can have in the thickly settled localities of the State peace on the Sabbath, peace by night or by day. There must be some restriction upon the sale of intoxicating drinks, or else society will resolve itself back into original barbarism. Being a citizen of a smaller city, I am yet willing to submit substantially to any restriction which would be deemed necessary to place upon this traffic in the larger city of New York.

Mr. S. TOWNSEND—Mr. Chairman, the proper question for the consideration of this constitutional body is whether laws on this or on any other subject should be general or special. After the experience we have had in this body, I think that with very few exceptions, there is a sentiment that the laws should be universal in their application to the cities, to the villages, to the towns and to the counties of the State. Now, the last amendment offered here makes a distinction which is scarcely a difference between the villages and the cities and other portions of the State. I would ask gentlemen to direct their memories to the question, how many taverns, in proportion to the whole number of taverns in the State, are found outside of the localities which will be included by some one of these terms. The exceptions are very trivial and I hope we will adopt the principle of the gentleman from Kings [Mr. Veeder] that localities shall be left to regulate themselves. I am in favor of that principle, sir, and in cities I would even go so far as to allow wards to make their own special regulations, so that the regulations in the different wards might be contrasted with each other, and the public mind be thereby enlightened in regard to this question. This, sir, is a question which has long been discussed. Forty years ago,

although at that time engaged largely in the importation of liquors, I gave money to temperance lecturers, because I believed that the community would be benefited by the prevention of intoxication, and I now say that the sentiment of the respectable dealers in liquors always has been in unison with mine, but not to prohibit their use as a beverage. Now, sir, we have not sufficient time to go into the minutiae of regulating this matter, and that had far better be left to the Legislature, but the question of the uniformity of laws is a constitutional question, and this I think no majority of this body will deny. The ill effects on the moral feeling and the political feeling of the people of striving to gain political advantages by these special laws never fail to develop themselves. There is no doubt that to a considerable degree the excise law in the metropolitan district has within the last year lost the political majority here a great many votes. One of the strongest instances of the effect of this sort of legislation that occurs to my mind, perhaps because I happened to take part in it some twenty-seven years ago, was when a special law was enacted on the subject of registry in the city of New York. There were then thirteen cities in the State and it was claimed by the New York delegation on this floor, that if the question had been presented in reference to the thirteen cities, it would have been a different question from what it was when confined to New York alone. Now, sir, one of the effects of that (or of some other unknown case) was to increase the democratic majority in that city by some thousands. It has always been a habit, a sort of infatuation, as it were, to have something special in the way of legislation in reference to the city of New York, and I believe the registry laws of the cities of New York and Brooklyn have something different in them now from the registry law of other cities in the State. As I have said, sir, I am in favor of the principle of these amendments—the principle of making exceptional legislation nowhere. Notwithstanding the fact that the gentleman from Richmond [Mr. Curtis] and others have risen in opposition to this amendment, I hope that second sober thought will induce those gentlemen to change their votes and support this principle of uniformity.

Mr. DUGANNE—I have no objection to accepting the amendment of the gentleman from Onondaga [Mr. Alvord], though I prefer a universal application of the law; but I desire to have incorporated in this amendment the word "food." The gentleman may not be aware that I had a special object in using that word in the amendment. But it is known that the city of New York, under operation of certain laws, has suffered to a great extent commercially, and that a large class of the community has been aggrieved and injured by restrictions placed upon the preparation of meat for the market. Special laws upon this subject have borne unequally on New York in comparison with other cities, and have been protested against, and a wide dissatisfaction exists throughout the city of New York regarding such partial legislation. Therefore, I propose that the sale and use of food shall be one of the subjects on which we forbid special legislation.

If that provision were incorporated in the amendment of the gentleman from Onondaga, I should have no strenuous objection to it, though I prefer general legislation on matters of a sumptuary character.

Mr. RATHBUN—I shall vote against this proposition at the present time, being satisfied that it is not an appropriate occasion for us to obtain a proper understanding of the whole scope of what ought to be looked into in the settlement of such a question. This Convention appointed a Committee on Cities and Villages, and that committee have made a report. This question now under consideration comes fairly and legitimately within the scope of that report, and in my judgment properly belongs to it. It cannot be denied that on many points, legislation should be different for cities from legislation for what is called the country. Dense populations require more laws, more government, more force to preserve order among them than sparse populations do where the people are not in the habit of getting together, in large numbers and where they are scattered more widely so that there is no association or congregation of large numbers tending to lead to disturbances. Now, as I said the other day, I am opposed to special legislation, and am in favor of general legislation. But when I say that, I mean that that legislation is general which applies to the class of localities which demand the same kind of legislation for the due preservation of good order. I regard that legislation as general which applies to all the instances of a particular class. It cannot be denied that legislation which would be sufficient for the government of a town in the country would be wholly insufficient and unfitted for the government of a city of twenty, thirty, forty, or fifty thousand people. I regard legislation as general, I say, when it is applied to all the instances of a class, and as special when it is applied to only some of the instances of a class. So far as we have had legislation special, in this sense, in regard to the city of New York, I think it unwise, and not only unwise, but improper and unjust also; and when that question comes up upon the report of the Committee on Cities and Villages, I shall perhaps feel that it is right and proper for me to give my views more fully upon it. But I assure the gentleman from Clinton [Mr. Weed] now, that I shall maintain the democratic doctrine which he has given me credit for upon the subject of general and special legislation. Certainly the gentleman has no right to complain of the results of special legislation, when the Assembly this year will be composed of a large majority of democrats. I have not yet learned how the Senate will be, nor do I care; but one thing, I apprehend, is pretty certain—that if the system of legislation in regard to New York and Brooklyn, which we have had for some time, shall be continued in force, there is very little doubt that the Senate also will pass over to the democrats at the next election, and that they will have the entire thing, Governor and all. Now, I submit that if the Senate and the Governor refuse to legislate properly, in favor of the cities of New York and Brooklyn, the gentlemen have only to wait a little longer, when this Legislature will

work out for them that salvation which they seem so much to desire.

Mr. WEED—Will the gentleman permit a question? I wish to ask if the sale of liquor in the country is not regulated by officers appointed by the local authorities? Does the gentleman understand the question?

Mr. RATHBUN—Yes, I understand it.

Mr. WEED—Now, if the local authorities of the State ought to govern their own localities, and control their own affairs, as the gentleman said they should, yesterday, why is he not willing that the local authorities of the cities of New York and Brooklyn should regulate their own affairs, and, through the appointment of proper officers, should control the sale of liquors in those cities?

Mr. RATHBUN—I do not believe that there ought to be that distinction made between the cities and the country which gentlemen say is made. I never read the metropolitan police bill, however, nor the excise bill, and I do not know how the licensing power is regulated in either, although I have heard that that power is vested in the police of the cities. But I am willing to say that I believe it is right that the licensing power of the city of New York should be given to some of the authorities in the city of New York, as it is given to the authorities in other cities. When you come, however, to the question of police for the execution of the laws, and the preservation of the peace of the city, the case in all respects is different from that necessary for the country. The execution of the laws and the preservation of the peace in the city requires an entirely different kind of administration from what is required in the country. It is complained that, in the cities the police go and shut up liquor shops at twelve o'clock at night, and on Sundays. Now, if in the country, a house of public resort is kept open at night, and those who go there to drink or gamble, create a disturbance in the late hours of the night, they are guilty of a misdemeanor and liable to be prosecuted and punished. That is the remedy in the country, and it can be done there, and it is an efficient remedy, because a single indictment would stop the whole thing in any particular place; but would it do in a city like New York to await the dilatory processes of indictments and trial? We know that it would not, sir, it is altogether too slow, and hence for the purpose of preserving the peace, and avoiding the slow processes of indictment and trial for nuisance or other misdemeanor, the police officers are authorized to go and close these places at twelve o'clock of the night for the purpose of preserving the peace and good order of the neighborhood. This plan saves time and expense, and if the power is abused by those exercising it, they can be held responsible.

Mr. VEEDER—Will the gentleman allow me to ask him a question?

Mr. RATHBUN—I did not rise to make a speech, and I believe I am not competent to answer half the questions that the gentleman might put to me. I wish merely to have this question wait until the session on cities and villages comes up, and then I intend to vote as I think right, upon this and all other questions of government

in the cities and in the country. That is all I desire to say. I do not believe that this is a proper time or occasion to consider this proposition. I believe that it belongs with the subject of cities and incorporated villages, and when we have that subject before us I trust that an enactment will be made which will apply to all such localities; and that is what I call a provision for general laws.

Mr. BAKER—I would inquire what the difference is between the amendment offered by the gentleman from New York [Mr. Duganne] and that offered by the gentleman from Kings [Mr. Veeder]?

The SECRETARY again read the amendments.

Mr. BAKER—I would suggest to the gentleman from New York the propriety of accepting the proposition of the gentleman from Kings, inasmuch as the object proposed by each of these amendments is the same, nominally to insert in the Constitution a clause prohibiting special legislation. I ask this as a favor from the gentleman from New York, because I desire to propose an amendment which I understand I cannot now propose under the rules, there being two amendments pending, and which is designed to carry out further the same principle argued for by the gentleman from New York, and also the gentleman from Kings, and the city delegates generally.

Mr. DUGANNE—I have already said that my amendment was predicated upon a moral view of the question with reference to the difference between the effect of alcohol as a beverage and the effect of wine and beer. But in order to give the gentleman from Onondaga an opportunity to submit his amendment, covering a provision for general laws to be established throughout the State, I am inclined to waive my original proposition. Should it be necessary hereafter that a law of special prohibition be applied to the alcoholic traffic in our city of New York—I mean that in case the health, safety or morals of that city shall, at any time in the future, demand a total inhibition of alcohol, or any other poison, such law will, of course, be as applicable to the poison in all other localities of the State, and should be enforced equally everywhere. If gentlemen in favor of prohibition are content with such general application, and are willing themselves to suffer the deprivation of any beverage in order to effect special good in the city of New York, why, then, I have no objection to accepting the amendment of the gentleman from Kings, provided the word "food" shall be inserted.

Mr. BAKER—Do I understand the gentleman to accept the amendment of the gentleman from Kings [Mr. Veeder]?

Mr. DUGANNE—I accept it on the condition above set forth.

Mr. VEEDER—I have no objection to inserting the word "food." I do not feel alarmed on that question, but I have no particular objection to having the word put in.

The CHAIRMAN—Does the Chair understand that the gentleman from New York [Mr. Duganne] accepts the amendment of the gentleman from Kings [Mr. Veeder]?

Mr. DUGANNE—Yes; modifying it by inserting the word "food."

Mr. BAKER—Inasmuch as the committee on the subject of temperance and the prohibition of the use of alcoholic and fermented liquors has not reported, and inasmuch as we are not sure that the report will be made by that committee in time for us to act upon it, and to incorporate any thing upon that subject into the Constitution, and inasmuch as we are now discussing the question of legislative power, and of inserting in the Constitution prohibitions against the exercise of legislative power in special cases, I think that now is the proper time to discuss this question and dispose of it. I am as ready to-day as I shall be to-morrow, or any future day during this session, and I feel desirous to explain to the committee the grounds upon which I shall give my vote in favor of the proposition, or the reason why I shall not vote for it; for I am not yet certain whether I shall vote for or against it. If the gentlemen from the cities, if the honorable gentlemen from Brooklyn, or New York, or Richmond will consent to insert in this same section the proposition which I intend to offer, which I think is simply carrying out the same principle, then I shall vote for the amendment offered by the gentleman from Kings, otherwise I shall withhold my vote. I will now state my amendment in order that the committee may have possession of my proposition, and to test the sincerity of those gentlemen who have argued so frequently, eloquently and ably in favor of impartial, universal and uniform legislation. I propose the following amendment to the amendment offered by the gentleman from Kings [Mr. Veeder]. Before the fifteenth line in the printed section insert the words, "or giving, granting, or donating any moneys out of the treasury of this State, for or toward the support of any charitable, educational, or religious institution or association whatever, except such as shall be supported by the State, and in the benefits of which all the counties of this State shall have an equal right to participate according to the amount respectively contributed by taxation by each of such counties."

Mr. WEED—I rise to a point of order.

The CHAIRMAN—The gentleman will state his point of order.

Mr. WEED—My point is that the amendment proposed by the gentleman from Montgomery [Mr. Baker], is not germane to the pending amendment.

The CHAIRMAN—The Chair is of the opinion that the point of order is well taken.

Mr. BAKER—I understood the Chair to have decided last night that any question pertaining to the prohibition of special legislation, or limiting of legislative power would be pertinent.

Mr. VEEDER—Will the gentleman allow me to make a suggestion? That his amendment will properly come in here as an independent proposition, and he had better submit it in that way.

Mr. BAKER—As I announced when I arose, my vote upon this question will depend upon the action of this committee upon the principle contained in the proposed amendment which I intend to offer, and if the gentleman from New York, the gentleman from Richmond, and other gentlemen who have insisted upon the insertion

of the amendment of the gentleman from Kings [Mr. Veeder], will still insist upon the exclusion of the proposition that I now propose, to require uniform legislation which will apply to the whole State alike in the matter of bestowing advantages and benefits upon each portion of the State according to the imposition and distribution of the burdens, I shall not vote for the proposition of the gentleman from Kings, but if they will accept my proposition I will vote for it. My desire is to test the honesty, sincerity and integrity of the motives of the gentlemen who have offered these amendments.

Mr. VEEDER—I desire to explain to the gentleman that I consider his proposition an independent one, and when it comes up separately I shall decide how to treat it. I am not here to "log-roll" one proposition against another.

Mr. BAKER—The proposition of the gentleman from New York [Mr. Duganne] was to insert a special provision against special legislation in regard to food, light wines and fermented liquors. The amendment of the gentleman from Kings [Mr. Veeder] was to prohibit special legislation regulating or prohibiting the sale or use of spirituous liquors. I understood the Chair to decide that this amendment offered by the gentleman from Kings was germane to the amendment offered by the gentleman from New York, and that not merely upon the ground that it related to liquor, but because it was upon the subject of limiting legislative power.

The CHAIRMAN—The Chair was under the impression and so decided that, under this section, containing various specifications, specifications relating to the same general subject were germane to each other; but the Chair is of opinion that a specification relating to a distinct and different subject is not germane to the one now under consideration.

Mr. WEED—If the gentleman will allow me a moment I will explain why I arose to a point of order. The rule adopted yesterday morning was that no subject, unless germane, not merely to the subject under discussion, but to the pending amendment, is not in order. That is why I rose to the point of order. The gentleman's amendment is one which can come up as an independent proposition.

Mr. BAKER—All I desire is to make a proposition so as to call the ayes and noes upon it at the proper time, with a view to test the sincerity of the gentlemen from New York in respect to the object of these amendments, and to see whether the delegates from the large cities were willing to adopt a rule which will exclude or take from the Legislature the opportunity to grant away the money of the people of the rural districts for the purpose of supporting the poor in the cities of New York and Brooklyn, and other large cities of the State. That question has got to be met not only here, but before the people. I do not offer this amendment, sir, with the intent to "log-roll," but I am frank to say that I am in favor of the amendment offered by the gentleman from New York [Mr. Duganne]. I am opposed to special legislation operating exclusively within cities in this way, and not applicable to other sections and portions of the State. Away back

in 1855, before the metropolitan police bill was passed, I remember very well being a member of the Legislature in this house; I remember how distinguished citizens from the city of New York came here and begged of the Legislature to pass that bill. I remember very well, too, that a gentleman who has since been elevated to high office in the city of New York, came here and lobbied about the Legislature for the purpose of getting that metropolitan police bill passed. I mean the Hon. A. Oakey Hall. I remember very well his approaching me and insisting upon my voting for the bill. I opposed it at that time upon the ground that it was legislation of a special character, and not applicable to all the cities of the State alike, and seemed like denying to the people of New York and Brooklyn the right of self-government. But I was told by that gentleman and by others that there were special reasons existing in the city of New York why they should have such a bill—a state of affairs entirely different from that existing in any other portion of the State, and requiring that different and more extensive powers should be conferred upon the police than in other places. I was induced to vote for the bill upon Mr. Hall's representations, and now, since this matter has been spoken of in connection with parties and politics, I desire to say that that same man has made several political speeches upon that question at every political campaign since the enactment of the law down to the last meeting at Tweddle Hall, where his remarks upon republican special legislation in imposing the metropolitan police bill and other like acts upon the city of New York were received with more applause than any thing else that was said in that Convention.

Mr. WEED—I ask the gentleman if that metropolitan police bill was not passed with a special understanding, almost a covenant, that it should be non-partisan, and if that understanding has not been departed from by the dominant party?

Mr. BAKER—I can only answer the gentleman that I, for one, never signed any covenant to that effect; neither am I aware that any such covenant or agreement was ever made by any body, or, if any such covenant or agreement was ever made, that it has been violated. I know that charges of that character have been made.

Mr. WEED—The gentleman says he does not know that the board of metropolitan police was to be non-partisan. I ask him if he does not know that the commissioners were appointed two from each party; and if he does not know, also, that since that time, when one of the democrats went out of office a republican was appointed in his place.

Mr. BAKER—I do not know that fact. I voted for the metropolitan police bill upon a distinct understanding, from the explanations given to me by Mr. Hall, of New York, that the business of garroting, which was then the fashionable mode of robbing people in the city of New York, made it necessary to pass that bill. He urged that the mayor of the city appointed men on the police, who would stand at the corners of the streets, and when a citizen was garroted and robbed in open daylight, and within a few yards, would always happen to be looking the other way. It was upon

such representations, sir, that I voted for the metropolitan police bill, which has constituted pretty much all the democratic political capital in the city of New York, and even in the country, from that time, ever since till the present.

Mr. VEEDER—I desire to ask the gentleman whether he does not think that democratic capital he speaks of has yielded a very handsome return. [Laughter].

Mr. BAKER—I will answer the gentleman before I get through. It has been said repeatedly in democratic caucuses all over the State, and even in the State platform, recently adopted by the democratic state convention at Albany, it was deemed necessary to say, that the republican party were partial, discriminative and invidious in their legislation against the city of New York, and the city of Brooklyn, in that they had passed the metropolitan police bill; a law creating a commission to protect emigrants from robbery and theft in the city of New York, when they land there from their ships; a law creating a health commission to protect the health and the lives of the people of the city of New York, from the invasions and ravages of disease; a law prohibiting the sale of liquor after midnight on Saturday night—

Mr. E. BROOKS—On every night.

Mr. BAKER—Well, on every night. That is held to be a special grievance by the delegates from New York and Brooklyn, that they are prevented from drinking their liquor after midnight and before six o'clock in the morning. [Laughter]. Now, I say that I am entirely willing that that law should be made generally applicable to all the cities and districts in the State; and if I want to drink my liquor after midnight and before six o'clock in the morning, I will send my petition to the Legislature to alter the law for that purpose. I repeat, sir, that I am in favor of general legislation. I see no reason why a law cannot be passed by the Legislature applying equally to other portions of the State as to the cities of New York and Brooklyn, and thus taking away from these demagogues in these cities, their political capital—for so I consider such men as A. Oakey Hall, who came here and asked for the passage of the metropolitan police bill, and then went home and made frequent speeches against the republican party for having enacted the very law he asked for himself. I would take away from these demagogues the opportunity to use such means against the party who did precisely what they asked, and did it upon their own representations of its necessity to protect their lives and property. Besides, I do not know why the city of New York should have any more carefully drawn laws for the protection of the public peace, and of the lives and property of its inhabitants than the people of the rural districts and all other parts of the State should have. We in the rural districts ought to be willing to come under the same general police regulations that we seek to impose upon the people of the cities, and I believe that my constituents would be entirely willing to live under the same legal provisions and subject to the same penalties that they would like to see imposed upon all the people of the cities and villages in the State, so that that par-

ticular democratic capital should be barren in its yield in future. In answer to the remarks of the gentleman from Fulton [Mr. Smith] that it would be unsafe and impolitic in this Convention to insert in this Constitution a clause prohibiting the Legislature from regulating or prohibiting the sale of intoxicating liquors in the cities of New York and Brooklyn because it might induce the opposition of that class of men who are in favor of prohibitory legislation, I want to say one thing to that gentleman, and that is, that from pretty accurate information and extensive observation made by myself for a number of years, and verified by what has taken place in the election this fall, that the extreme prohibitory men, the class of men who claim to be in favor of extreme prohibition, have generally, and especially this fall, joined with the extreme liquor interest and voted down the only party that ever gave them a stringent law to regulate the sale of liquor and to suppress intemperance. I repeat that the extreme prohibitory men joined with the liquor interest of the dominant party in the city of New York in denouncing and voting down the republican party of this State at the recent election.

Mr. HAND—Will the gentleman allow me to ask him where that happened?

Mr. BAKER—All over the State.

Mr. HAND—No, sir; not in Broome county. In that county we had just three votes for what is called the "Carson league ticket;" and I know that in my town there was a ticket in circulation called the "Carson league ticket," but the count showed that it had received no votes at all.

Mr. BAKER—The result in my town showed that the democratic party had gained one, and I was informed after the election that that one was a Carson league man.

Mr. HAND—On what ground does the gentleman make that assertion.

Mr. BAKER—From the almost universal expression of sentiment that was promulgated immediately after the State nominations of the respective parties, that that class of men who were extreme prohibitionists were so dissatisfied with the republican party because they did not insert a clause in their platform to suit them, that they would go to the polls and vote for the opposite extreme. I undertake to say that if you will go abroad among the people of the State holding that forth in the different districts, and figure up the way the extreme prohibitionists voted, you will find that the republican party did not gain a vote anywhere in the State from them. I shall vote, sir, in committee, in favor of the proposition of the gentleman from Kings. I am willing, and I now and here distinctly announce it, to vote for the amendment, because I am in favor of the principle; but when we come into the Convention, if the members from New York and the other cities of this State, or the democratic members of the Convention will not vote to apply the same principle and carry it out in all the departments of State legislation, and especially in those cases where they are seeking to draw by taxes from the people of the country the means for the support of these paupers in the

city, I shall vote in Convention against it, because I believe in universal equality and the universality of our laws in all matters of legislation imposing burdens or bestowing favors.

Mr. E. BROOKS—Will the gentleman allow me to say, that I hope he will come to no such conclusion as this, for this reason: the clause under consideration simply relates to the sale of liquor, and asks that it shall be uniform in all parts of the State. I submit to the gentleman that that is a question in and of itself, independent of any other question relating to education, or religious societies, or educational purposes; and these questions are entirely distinct from it. Therefore, it is unjust, if this proposition shall meet the favor of the committee and the Convention, to add these other provisions to it. It is a threat upon the part of the honorable gentleman from Montgomery [Mr. Baker] to punish all delegates who will not vote for making those other things uniform, for not acting according to his views. It is punishing educational and charitable institutions because members choose to make this uniform.

Mr. BAKER—I ask the gentleman's pardon. I take no such position. There is nothing in the amendment which I intend to offer that proposes to prohibit the donation of money to charitable institutions. It is only to make the law universal or general, and to operate equally and alike in all the counties of the State, and equally and alike upon all the tax payers of the State. That is all I ask. But in answer to the strictures made by the gentleman upon the subject-matter of the section under consideration, I understand this section to relate to the limitation of the powers of the Legislature. There is a prohibition upon the power of the Legislature to grant divorces. That has nothing to do with the subject of the sale or regulation of liquor. The Legislature are prohibited from "authorizing the sale, mortgaging or leasing of the real property of minors, or other persons under disability." That has nothing to do with this subject of the sale, regulation or use of liquors. The same section forbids "changing the names of persons." I would inquire of the honorable gentleman what that has to do with the sale or use of liquor? And also "laying out, working, or discontinuing public or private works or highways." All their specifications in this section are different subjects embraced within the same section, and yet all are germane to the subject-matter of the section, which is the limitation of legislative power.

Mr. E. BROOKS—The distinction, it seems to me, is as broad as between light and darkness. The amendment under consideration relates to the habits of the people, the food they consume, the liquor they drink, and the liquor which may be sold. All these other questions, which relate to railroads, divorces, mortgages, etc., are questions of civil government peculiarly, and do not belong directly or indirectly to the habits of the people. They are eminently distinct.

Mr. BAKER—The amendment proposed and intended to be offered by me is not yet before the committee. If it were I could answer the gentleman by showing its very direct relation to the habits and social condition of the people,

fully as direct as the granting of a license to sell or regulating the sale of liquor. My answer to the gentleman was and is, that the part of the Constitution now under discussion relates to a great variety of subjects, and I was enumerating these subjects as embraced in the section. The next in order is "granting to any individual, association or corporation the right to lay down railroad tracks in any locality within this State." I admit that the prohibition of granting money to charitable institutions is different from the subject of granting licenses or prohibiting the sale of liquor, but it has just as direct relation to the habits and social condition of the people, because I undertake to allege that in the large cities of this State a system of building hospitals and other charitable institutions has grown up and is constantly increasing which is threatening to absorb large amounts of the money of the people, drawn by taxation from all alike, while only the cities enjoy its use, and we find no feeling of reciprocity on the part of the city to excuse us from paying taxes to be appropriated to their poor-houses. We find no feeling of reciprocity manifested by the members of the Legislature who represent the people living in the city, although the people of the country have to pay their proportion of the taxes, and the law provides that they, the rural counties, are to support their own poor at their own expense. The object of the amendment which I propose to offer before the committee rises, so that the Convention may act upon it, is to get the subject squarely and fairly before this Convention, and to see how we will be treated and dealt by the delegates from the large cities of this State, and especially by those gentlemen who profess to be in favor of equal legislation and equality before the law. I want to see whether they are capable of applying the same rule where it is against their own pocket and their own interest as where it is in their favor, or whether, by their professions of desire for equal laws, applying to city and country alike, they are actuated by selfish motives or by the principal of equality as to burdens and benefits.

Mr. ALVORD—I offer this amendment with no intention of furthering debate, and if it elicits debate I shall ask the privilege of withdrawing it. I trust we are sufficiently enlightened to come to a direct vote. I offer the following substitute for the substitute offered by the gentleman from Kings [Mr. Veeder] to the amendment of the gentleman from New York [Mr. Duganne]: "Regulating or prohibiting the sale of intoxicating or other beverages, except it may pass laws on this subject which may contain special provisions as applicable to all cities, or all incorporated villages, or all towns in the State."

Mr. SCHELL—It was not my intention to take part in this discussion—

Mr. ALVORD—I offered this amendment, believing that the debate would cease; but if not, I withdraw it.

Mr. SCHELL—It was not my intention to take part in this discussion with regard to the subject now before the committee; but having in the early part of the discussions in this body, taken occasion to refer to the gross injustice which from time to time had been imposed upon the city of

New York, and especially at that time in reference to its representation, when I appealed to this Convention to make provision that a census should be taken in the State in order that the views of the people of the State might be faithfully and fairly represented in the deliberative bodies, and that representation might go with taxation, I have now risen principally to reply to a remark made by the gentleman from Montgomery [Mr. Baker]. I think the statements he has made as to Mr. A. Oakley Hall, one of the most distinguished gentlemen we have in our State, is unjust and uncalled for upon the floor of this Convention. It may be true that Mr. Hall did, in 1858, when the police question was before the Legislature, appeal to the members of the Legislature to assist in its passage. It may be true that in his effort to procure the passage of that bill, he may have concurred with the gentleman from Montgomery in his views upon the subject at that time.

Mr. BAKER—Is the gentleman aware that Mr. A. Oakley Hall was here especially lobbying and attending to getting through the metropolitan police bill, and that immediately after the passage of the bill he was appointed counselor for the board, and has continued to hold that office from that time to this?

Mr. SCHELL—I do not doubt but that may be the fact. But I do not know that that has anything to do with the matter I desired to present to the committee, whether Mr. Hall was or not. All I can say is that the police commission, as referred to by the gentleman from Clinton [Mr. Beckwith], was intended as a benefit to the State of New York. And however distasteful its effect may have been to the people of the city of New York, they received it from the Legislature as a necessity. At the same time the dissent of a large majority of the people of that city has been expressed from time to time, as they have had opportunity, to the action of the Legislature and establishing of such a commission. But in 1866 other duties were imposed upon that commission, and it is of the exercise of those duties that Mr. Hall, as the representative of the people of New York, has a right to complain. It is its effect upon the citizens and the obligations that law imposes, which he has felt called upon to denounce, and has denounced, both in New York and elsewhere, and in relation to which he has appealed to good citizens and the true representatives of the voice of the people to let the will of the people be heard. The State of New York has been aroused by reason of this partial legislation, and the calls for its discontinuance will be responded to, and their influence will be felt by every gentleman who represents the other side, here or elsewhere.

Mr. RUMSEY—Does the gentleman desire that the Legislature shall repeal all laws that give to the city of New York special protection, to its property and persons, against desperadoes of all sorts, and all the peculiar privileges that city has above what the country has, so as to leave the city in the same condition that the country is in?

Mr. SCHELL—I am content that the laws shall be alike, and that they shall affect every citizen of the State of New York in precisely the same way. We shall be glad if we shall be re-

lieved of the protection, in a great measure, that we have received from the people of the country. Look at our school tax. Although we pay two millions every year to support our local schools, we are obliged to pay about \$300,000 annually to the people of the country.

Mr. RUMSEY—Does the gentleman mean to say that the people of the city are taxed more than in the country, in proportion to the property they have?

Mr. SCHELL—They are.

Mr. RUMSEY—Not at all, sir.

Mr. SCHELL—I mean by that that the people of the city of New York are taxed for the support of the common schools of the city of New York, and contribute for the support of those schools between two and three millions of dollars a year. In addition to that we are taxed to pay about \$455,000 a year for the support of the common schools of the State, from which we receive back about \$250,000, leaving nearly \$200,000 contributed by the city of New York for the support of the common schools in the State, in addition to its own local taxation to meet the expense of its own schools. Why not make the taxation general throughout the State? Why should the people of the city of New York be taxed for schools in the country?

Mr. BAKER—Does the gentleman claim that the tax payers in the city of New York pay for the support of schools in the country by virtue of any particular act? If so, what act is it?

Mr. SCHELL—The law under which the appropriation is made of the taxes levied upon the city of New York. What is known, I believe, as the general school law assigns a similar tax throughout the whole State, which is uniform in its character. In addition to that we have a special law which imposes upon property in the city of New York a tax for the support of schools in that city. That law should be changed, so that the people of the State may help the people of the city of New York in the support of their common schools.

Mr. BAKER—I would like to ask the gentleman another question. Does not the same rule prevail in the villages in the country? If a village possesses a larger amount of property than the country surrounding it, does not a portion of the school fund raised in the village go to the support of district schools in the country where they are poor?

Mr. SCHELL—We are in a different situation, for New York city supports its own schools; and what is paid by that city the rural districts get the benefit of. But this is outside of this question. I can only say that by these laws injustice is done to the city of New York. By the care which the State undertakes to assume of its public morals, the people are deprived of self-government and the representation to which their morality, intelligence and energy entitle them. Injustice is done them by their friends in the country taking upon themselves the entire political government of its institutions.

Mr. ALVORD renewed his amendment.

Mr. VEEDER—Mr. Chairman—

SEVERAL DELEGATES—Question; question!

Mr. VEEDER—I do not often take up the time

of the Convention, and I think it is hardly fair to call "question" when I take the floor. I shall speak but a word or two, and could have said it if you had allowed me to make my explanation. I do not think this proposition will meet the object I have in view. It allows the Legislature to pass such laws as shall have a general application to cities and different laws to have a general application to the country. That is virtually saying that they may have an excise law in the cities and no excise law in the country. I say that if they do pass excise laws they should be uniform throughout the State, and not merely a law to affect the people in the cities and leave the towns in the State to go without any such law.

SEVERAL DELEGATES—Question!

Mr. VERPLANCK—It has been claimed by gentlemen that we should wait for the report of the Committee on Prohibition before the question is taken upon the proposition now under consideration. While it is not parliamentary, perhaps, to state what the action of the committee will be before we report, I may, perhaps, be pardoned for conjecturing that when the report of the majority of that committee comes to this Convention, it will be simply that it is inexpedient for the Convention to pass any article on this subject. The proposition of the gentleman from Onondaga [Mr. Alvord] seeks now by direct constitutional action, to authorize the Legislature to regulate or prohibit the sale of spirituous liquors, wines and beer, so long as they pass uniform laws for cities, uniform laws for villages, and uniform laws for towns. It will be seen, therefore, that this proposition made by the gentleman will be in conflict with what I conjecture will probably be the report of the Committee on Prohibition. Again, sir, I am opposed to this proposition now before us, upon general principles. The correct rule is, that laws should be uniform throughout all sections of the State. If a foreigner coming to this country from the enlightened countries of Europe should ask, what is the license law in the State of New York? he would be told that there is no uniform law on the subject. That in certain portions of the State one rule was applicable and in another portion a different rule. It would strike an enlightened European with astonishment to learn that laws which should be general in their character, were in point of fact different when applied to different localities of the State. It strikes me that the proper way is to have general legislation applicable to the whole State. As a member of the Committee on prohibition and the sale of adulterated drinks, I know that there are a large number of temperance men who believe that all legislation upon this subject should be abandoned. It will be recollected that when Mr. Spencer was lecturing in this hall, before members of the Convention, he was asked by the chairman of the committee [Mr. Graves], whether the temperance men, if they could not have prohibition, did not prefer to have all excise laws abolished. After hesitating some little time he declined to answer that question. Another distinguished lecturer here, whose name I do not now remember, was asked the same question and declined to answer. I am informed that both these gentlemen, after return-

ing to their homes, and thinking and consulting in reference to the question, have written letters to the chairman of the committee, stating that on the whole they were not authorized to say that the temperance men would desire that all legislation upon the subject should be abandoned. But though they were prominent temperance lecturers they were compelled to go home and talk with their friends and consider the subject before they could answer the question. I speak of this for the purpose of showing that the question of legislation upon this subject is among zealous temperance men a doubtful question. To serious thinking men it is to-day a doubtful question whether legislation can be made to subserve the vast interests of the temperance cause. I am inclined to think the temperance cause, if it had been left to the moral sentiment of the people, would have been advanced far beyond its present condition. My principal object in addressing the committee was to call attention to the fact that the amendment confers upon the legislature the power to prohibit absolutely the sale of liquors, wines and beer.

The hour of two having arrived, the PRESIDENT resumed the chair, and the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock P. M., and again resolved itself into Committee of the Whole on the report of the Committee on the Powers and Duties of the Legislature, Mr. ANDREWS, of Onondaga, in the chair.

The CHAIRMAN announced the pending question to be upon the substitute offered by Mr. Alvord to the amendment offered by Mr. Duganne.

Mr. VERPLANCK—I do not propose to discuss, on this occasion, the question of the New York commissions, further than to say that I know of no reason why, in the metropolitan police district and in the Niagara police district, licenses should be intrusted to a board of commissioners appointed at Albany, when that power in every other locality is vested in a board of officers appointed by the locality in which they act. I do not intend to consume much of the time of this committee, and did not until the moment I arose intend to address the committee at all. But I desired, as the vote was about to be taken, to examine the amendment proposed. I did not suspect the design of it until that moment. We have before the Committee on Prohibition and Adulterated Liquors a great number of petitions asking this Convention to submit to the people the question whether or not the Legislature shall have power to prohibit the sale of liquors within this State. These most zealous friends of the temperance cause have asked nothing more than this, that that question should be submitted to the people. By the amendment of the gentleman from New York [Mr. Duganne], he having accepted the amendment of the gentleman from Kings [Mr. Veeder], it is proposed to confer by this article the power upon the Legislature, immediately, without submitting the question to the people, and prohibit, absolutely, the sale of liquors, wines, ale and beer. I ask the responsible major-

ity of this body if they propose to give the Legislature the power of prohibition, when we are asked only that the question should be submitted to the people?

Mr. AXTELL—Will the gentleman from Erie [Mr. Verplanck] allow me to inquire if the petitions referred to do not ask that the question of prohibition itself be submitted to the people; not the question of empowering the Legislature to prohibit?

Mr. VERPLANCK—I understand them to ask that the Legislature may be empowered to prohibit, absolutely, the sale of liquor, beer and wine. I did not suppose it was ever contemplated that the Constitutional Convention should, by a constitutional provision, prohibit the sale of liquors within the State.

Mr. ALVORD—Do I understand the gentleman from Erie [Mr. Verplanck] to say that the Legislature have not now the right to prohibit the sale of liquor?

Mr. VERPLANCK—That is my opinion.

Mr. ALVORD—That is the first time I have heard it doubted.

Mr. VERPLANCK—Then the gentleman has been singularly deaf to all the discussions in this State and in the courts of the State.

Mr. ALVORD—It was decided upon different grounds from that.

Mr. VERPLANCK—I beg the gentleman's pardon; the principal ground was the confiscation power in the act of the Legislature; but in the opinions delivered he will find that other questions were raised. I believe that the Legislature have no power to prohibit absolutely the sale of liquors within the State. If they have the power to prohibit the sale then they have the power to put in motion all the machinery necessary to bring about that object; and if they find in a person's hands liquors, with an intent on his part to sell them, there can be no other practical way to prevent that sale, except seizure and confiscation. But I do not, as I said before, intend to discuss this question. I only want to call the attention of members of this Convention to the effect of passing either the amendment of the gentleman from Onondaga [Mr. Alvord] or the amendment of the gentleman from New York [Mr. Duganne] as amended by the proposition of the gentleman from Kings [Mr. Veeder]. A single remark more. The gentleman from Montgomery [Mr. Baker], in discussing this question, said that in the late canvass Mr. A. Oakley Hall was through the center of this State discussing the issues before the people; and that there was no subject which elicited such outbursts of applause as the condemnation of the commissions appointed at Albany by which cities are in part governed. Does not that gentleman know that unless there is injury there will not be complaint? Does he not know that no argument can make men discontented when there is no cause for discontent? In a government like ours, and in any government, except one purely despotic, public opinion ought to have, if not a controlling at least considerable effect upon the deliberations of a Convention. I call the attention of the committee to public opinion upon this subject, and hope it will guide the action of the committee.

The amendments were read by the SECRETARY.

Mr. GRAVES—Is the amendment a substitute to the original resolution offered by Mr. Veeder?

The CHAIRMAN—It is a substitute for the original amendment offered by the gentleman from Kings [Mr. Veeder], the gentleman from New York [Mr. Duganne] having accepted it.

Mr. BICKFORD—It strikes me as I remember the proceedings, that the Secretary has not read the pending amendment to which the amendment offered by the gentleman from Onondaga [Mr. Alvord] is a substitute.

Mr. VEEDER—By way of explanation, I will state that the original amendment offered by the gentleman from New York [Mr. Duganne] was in relation to regulating or prohibiting the sale of food, native wines, and malt liquors. I moved an amendment to that, in reference to regulating or prohibiting the sale of liquors, wine, ale and beer, and the gentleman from New York accepted my amendment, inserting the word "food." To that proposition the gentleman from Onondaga [Mr. Alvord] moved his substitute.

The question was put upon the substitute offered by Mr. Alvord, and it was declared carried.

Mr. VERPLANCK—I now move to strike out from the substitute, the words, "or prohibiting."

Mr. BICKFORD—It will be great folly, I apprehend, with all respect to the mover, to adopt this amendment at present. The present license law is nothing else but a prohibitory law. Prohibition is the general rule, and license is the exception. The great mass of the people are prohibited from the sale; and those only are permitted to sell who are especially licensed by the authorities to sell. To strike out prohibition, would make the whole thing inconsistent. It might perhaps be implied from it that no law prohibiting any body from selling could be passed by the Legislature of the State. I apprehend that nobody is willing to adopt that provision, that the great mass of the people shall not be prohibited from selling and the few permitted to sell, when authorized by special authority to sell. Under license laws, prohibition is the rule, and license the exception to the rule.

Mr. VERPLANCK—I have used the word "prohibition" in the sense in which it is used and understood by the people of the State, and in which it is used and understood in the decisions of the courts of the State. The substitute of the gentleman from Onondaga, [Mr. Alvord] and which has been adopted by the committee, authorizes in terms the Legislature to prohibit absolutely the selling of wines, liquor, beer, and ale, provided such laws are uniform for cities, uniform for villages, and uniform for towns. That is the effect of it.

Mr. CONGER—If there is any desire to perfect this clause, I think there will be no difficulty whatever in arriving at the conclusion that the amendment proposed by the gentleman from Erie. [Mr. Verplanck], should be adopted; not simply with reference to this clause in itself, but to that which follows. When you come to couple the clause under consideration with the words in the seventeenth and eighteenth lines—"and the Leg-

islature shall pass general laws providing for the cases enumerated in this section"—it seems to me conclusive that you confer upon the Legislature the power, nay, further, you command them, to pass a general law prohibiting the sale of liquors. The argument which the gentleman from Jefferson, [Mr. Bickford], uses, as to the necessary connection between regulation and the partial prohibition dependent on such regulation, while pertinent to the language in the clause before us, is hardly applicable to the clause which follows, to which I seek to draw the attention of the committee. If the section contained the simple declaration that the Legislature should not pass any special or local laws regulating or prohibiting the sale of liquors, then it might be a question whether the power to pass a general law of total prohibition was conferred. But there is scarcely a doubt left about it from the language which follows in the lines to which I have adverted, and which are made applicable to the clause we have under consideration.

Mr. SMITH—Will the gentleman allow me to ask him a question? I understand the gentleman from Rockland [Mr. Conger], to be a democrat *par excellence*; and I wish to know whether, in case an overwhelming majority of the people of the city of New York, the democracy included, should ask to have a prohibitory law, he would wish us to tie up the Legislature so that they could not obey the voice of the people?

Mr. CONGER—If I am called upon, in accordance with the rules of conventional propriety, to respond to the question, I beg to be excused from touching upon the premise with which the gentleman prefaced his question. I now say that so far as I understand the decision of the court of highest resort, the right of absolute prohibition does not rest with the mere popular will of the people of the State of New York; that there is a difficulty in the way of absolute prohibition arising from the relation of the State to the general government under the Constitution of the United States, so that a popular vote, although it might prevail, for the time being, as the law of the State, if brought to a final test by the Constitution of the United States would be a nullity. But when the gentleman asks "if such a vote should be given," I think he alludes to an impossible case, because there is no earthly possibility that the majority of the people of the State of New York would, for the next quarter of a century at least, demand by a popular vote a law of absolute prohibition. In that view of the case, it is hardly necessary to give further answer to the question as put by the gentleman from Fulton [Mr. Smith]. Now, sir, let me turn the tables upon him, and ask him the question as a constitutional lawyer, whether the final language in this section, which I have read, in lines seventeen and eighteen, requiring the Legislature to pass general laws in all the cases enumerated in the section, would not require the Legislature to pass a general law prohibiting the sale of liquor, or if the disjunctive clause is to be emphasized, give the discretion under the general power so to do.

Mr. BECKWITH—I would like to inquire of the gentleman from Rockland [Mr. Conger] one question, whether he means to say that any court of the

States or of the United States has held that the States have not the power to prohibit absolutely the sale of ardent spirits by retail—not in large quantities, as imported, but by retail?

Mr. CONGER—Conceding that to be so, the language of this section does not specify prohibiting the same by retail; so that I cannot see that his question implies any sufficient answer to the position I have taken on the general principle.

Mr. BECKWITH—If it be the case that the States have not the authority to prohibit the sale of ardent spirits in large quantities as imported, but may prohibit it by retail, then if the Legislature should pass a law which comes in conflict with the Constitution of the United States, so far as it came in conflict with the Constitution it would be void; and if the people should ask that a prohibitory law should be passed, then the Legislature might pass one to the extent that the States have power—that is, they might prohibit its retail to be drank or to be sold in small quantities.

Mr. HALE—I call the attention of the committee to the fact that these two words which the gentleman from Erie [Mr. Verplanck] proposes to strike out, were words first suggested by the amendment offered by the gentleman from Kings [Mr. Veeder]. I trust, therefore, that all our democratic friends, who so eloquently advocated the amendment of the gentleman from Kings, will vote against this proposition to strike out those words which he originated.

Mr. VEEDER—Will the gentleman allow me to make a correction? If the gentleman will examine the amendments as offered he will find those words in the original amendment of the gentleman from New York, and my object was to cover the whole ground.

Mr. HALE—Will the gentleman inform me whether the words "or prohibited" were not in the amendment he offered?

Mr. VEEDER—Certainly; they were in the amendment I offered.

Mr. HALE—That was all I meant to say.

Mr. VEEDER—I understood the gentleman to say that that language originated with my amendment.

Mr. HALE—I suppose the words were known in the English language before. They were contained in his amendment.

Mr. VEEDER—They were in the original amendment offered by the gentleman from New York [Mr. Duganne], which related to the sale of food, native wines and malt liquors, whereas mine included the whole category of spirituous liquors.

Mr. FERRY—I would ask the gentleman from Onondaga [Mr. Alvord] if he would not modify his amendment so as to strike out the words relating to intoxicating liquors, and say "relating to the subject of excise," which will cover all the various liquors; which would obviate the objection to the use of those words as a matter of taste. Another view of it has occurred to me: that the dealers in liquor may invent some other name under which liquor may be sold hereafter in some shape, either malt liquor or spirituous liquor. If he will put his amendment in the form I have suggested, then all excise laws will be general.

Mr. ALVORD—If the gentleman will permit me to answer him, I will say, in the first place, that the amendment is out of my hands. It has passed the committee. In the next place, the gentleman probably does not understand it. It says "intoxicating liquors or other beverages." I think that will include every thing, even water.

Mr. FERRY—Still, as a matter of taste, I would prefer in our constitutional enactments we should avoid the use of the words "intoxicating liquors," if we can.

The question was put upon the amendment offered by Mr. Verplanck, and, on a division, it was declared lost, yeas 17, noes not counted.

Mr. DUGANNE—I move to amend the seventeenth line by striking out "shall" and inserting "may."

The CHAIRMAN—That amendment is not germane to the pending proposition.

Mr. DUGANNE—That has been adopted.

The CHAIRMAN—It has been adopted in lieu of the amendment, but not yet incorporated in the section itself.

Mr. MERRITT—Having been adopted as a substitute, it is not open to further debate, and the motion to accept it is merely formal.

The CHAIRMAN announced the question on the amendment of Mr. Alvord, which had been adopted as a substitute for the amendment offered by Mr. Duganne.

Mr. VERPLANCK—I would like to say a single word. We are here engaged in making a Constitution that we hope will be adopted by the people of the State. I think that the substitute adopted by the committee confers upon the Legislature the absolute power to prohibit the sale of liquors within the State. If I should be mistaken in this—perhaps I am—still it would be so understood; and how the gentlemen of this Convention, acting upon the responsibilities they have assumed, can present a Constitution with such a provision to the people of the State, with the hope of its adoption, I cannot conceive.

Mr. BICKFORD—I would ask the gentleman as a lawyer, and as a judge, if the Legislature is not the general legislative power of the State, and if they may not pass any act which is not prohibited either by the Constitution of the State or the Constitution of the United States, and if they do not possess power now to pass a prohibitory law by virtue of that general provisions of the public law. Have not the Legislature now power to pass a prohibitory law? Further than that, I would like him to answer this question: How can he regulate, as he calls it, by a license, unless he makes prohibition a general rule? You have to begin all license laws by prohibiting people to sell liquor, and then point out special exceptions. There must first be authority to prohibit, or there can be no authority to license. Because a license would have no effect if every body had the privilege to sell. You must first have power to prohibit before you can license at all.

The question was put on the adoption of the amendment as amended by the substitute of Mr. Alvord, and, on a division, it was declared adopted by a vote of 49 to 38.

Mr. HALE—I move that the committee now

rise and report the article for the consideration of the Convention.

Mr. BAKER—I wish the gentleman would give way to allow me to offer my amendment so a vote can be taken upon it in Convention.

Mr. HALE—As I understand the rule, the amendment can be offered in Convention without being previously offered in committee.

Mr. DUGANNE—I think the amendment cannot be offered in Convention unless it has been previously offered in committee.

Mr. E. BROOKS—I wish to say that if the amendment of my friend from Montgomery [Mr. Baker] is to be offered as it was presented this morning, it would inevitably lead to a long discussion. I regard it as a direct attack upon the charities of this State, and think its effect would be most disastrous to those charities. Therefore, if the amendment is pressed, it must lead to a long discussion.

Mr. BICKFORD—I wish to appeal to the gentleman to withdraw his amendment for a moment.

The CHAIRMAN—Does the Chair understand the gentleman from Essex [Mr. Hale] to withdraw his motion?

Mr. WEED—I rise to a point of order.

The CHAIRMAN—The gentleman will please state his point of order.

Mr. WEED—A motion to rise and report progress is not in order, as long as there is an amendment pending. The rule is to move to report progress, and then move to refer it to the Convention.

The CHAIRMAN—The Chair is advised that the point of order is well taken.

Mr. ALVORD—I move the committee do now rise, report progress and ask leave to sit again.

Mr. WEED—I rise to another point of order.

The CHAIRMAN—The gentleman will please state his point of order.

Mr. WEED—The gentleman from Onondaga [Mr. Alvord] cannot make that motion as long as the gentleman from Jefferson [Mr. Bickford] has the floor.

The CHAIRMAN—The gentleman from Jefferson [Mr. Bickford] has made no motion.

Mr. WEED—The gentleman from Jefferson—

The CHAIRMAN—The Chair did not recognize the gentleman from Jefferson.

Mr. BICKFORD—I do not wish to make a motion; I wish to call the attention—

The CHAIRMAN—The gentleman from Jefferson is out of order.

The question was then put on the motion that the committee rise, report progress, and ask leave to sit again, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. ANDREWS, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Powers and Duties of the Legislature, had made some progress therein, but not having gone through therewith, had instructed their Chairman, to report that fact to the Convention, and ask leave to sit again.

The question was announced on granting leave.

Mr. ALVORD—I move that the committee be

discharged from the further consideration of this article, and that the same be considered in Convention.

Mr. MERRITT—I move that it be the special order immediately after the consideration of the subject of canals.

The PRESIDENT—The gentleman is not in order. The question is on the motion of the gentleman from Onondaga [Mr. Alvord], that the report be further considered in Convention.

Mr. BARTO—I call for the ayes and noes.

SEVERAL DELEGATES rose to second the call.

The PRESIDENT—Under the amended rule, twenty being required to second the demand, for the ayes and noes, and the number of delegates not having risen, they are not ordered.

The question was then put on the motion of Mr. Alvord, and it was declared carried.

Mr. ALVORD—I move that in the discussion of this matter in the Convention the debate be limited to five minutes to each speaker upon any amendment, and that no gentleman be allowed to speak more than once upon any amendment.

Mr. VERPLANCK—The committee have resolved not to sit again upon this subject, and that it shall be considered in Convention; but they have specified no time, and I suppose this motion of the gentleman will lie over under the rule.

The PRESIDENT—The Chair will inform the gentleman from Erie [Mr. Verplanck] that it is the business already in order to consider the report of the committee.

The question was then put on the motion of Mr. Alvord, and it was declared carried.

The SECRETARY then read the first section of the article as reported by the Committee of the Whole.

Mr. BICKFORD—I move to strike out all after the word "call." The effect of the amendment will be that when the Legislature is called together they can transact any business that may require to be transacted.

The question was put on the amendment of Mr. Bickford, and it was declared lost.

Mr. VERPLANCK—This is rather sharp practice. Heretofore the Convention has uniformly ordered that articles as perfected in Committee of the Whole be printed before considering them in Convention, so that gentlemen could have the article before them for the purpose of perfecting or amending the same in the Convention. For some reason it is proposed to hurry this article through without giving members this opportunity.

The PRESIDENT—The chair will inform the gentleman from Erie [Mr. Verplanck], that there is no question before the Convention.

Mr. VERPLANCK—I make the motion that the further consideration of this report be postponed; and that the article as perfected in committee be printed and laid upon the tables of the members of the Convention.

The PRESIDENT—Will the gentleman specify some definite period for its postponement.

Mr. VERPLANCK—Saturday morning at ten o'clock.

Mr. VEEDER—I move to amend by making it Tuesday morning. Many of us will be absent

Saturday; there is no immediate hurry about it. Tuesday morning will be a better time.

Mr. WKED—If the Secretary thinks that the article as perfected by the committee will be printed by Saturday morning, the time the gentleman from Erie [Mr. Verplanck] proposes, I trust the gentleman from Kings [Mr. Veeder] will withdraw his amendment, for if the report can be printed, then we can go on at that time, if we have a session.

Mr. VEEDER—I would do it with a great deal of pleasure; but I know many will desire to be here and listen to the discussion of this article.

A DELEGATE—Then let them be here.

Mr. VEEDER—I do not know that any hardship can come of it. We can dispose of it then, and we have plenty of work to keep us busy until that time.

Mr. MERRITT—I move to amend so as to make it the special order for to-morrow evening at seven o'clock. I feel very sure it can be done by that time. We can take it up in the evening session and go through with the article.

The question was put on the amendment of Mr. Merritt, and it was declared carried.

The question recurred on the original motion of Mr. Verplanck.

Mr. RICKFORD—I wish to say one word. This report of the Committee of the Whole has been printed already, except what was passed yesterday and to-day, which will be printed during the recess of the Convention.

The question was put on the motion of Mr. Verplanck, as amended, and it was declared carried, and the further consideration of the report was postponed until to-morrow evening at seven o'clock.

The PRESIDENT—The next business on general orders is the report of the Judiciary Committee.

Mr. HALE—Of the fifteen members of the Judiciary Committee, I think there only four in the city. The chairman of the committee is absent. I do not like to make any suggestion or proposition which will delay the business of the Convention, but I feel compelled to move the postponement of the consideration of the report of the Judiciary Committee, until after the consideration of the next following report on the general orders.

Mr. E. BROOKS—I would like to ask the President what report succeeds the report of the Committee on Judiciary?

The PRESIDENT—The Chair is informed by the Secretary, that the next report is that of the Committee on Charities and Charitable Institutions.

Mr. MERRITT—Would it require more than a majority to postpone?

The PRESIDENT—It will require two-thirds.

Mr. MERRITT—I hope there will be no postponement. There are plenty of delegates who are ready to talk on the judiciary article.

Mr. LEE—I should like to hear some reason assigned why this order of business should be laid aside. It is the same sort of excuse we have listened to day after day, that the chairman of some particular committee, when a report upon a particular subject has been reached, was not present.

Mr. HALE—If the gentleman from Oswego [Mr. Lee] will give way, at the suggestion of some other gentleman of the committee, I will withdraw my motion.

There being no objection, the motion was withdrawn.

The Convention then resolved itself into Committee of the Whole, upon the report of the standing Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The SECRETARY proceeded to read the report of the Judiciary Committee, to the conclusion of the third section.

Mr. LANDON—I move that the further reading of this report be dispensed with, and that it be read by sections.

Mr. E. BROOKS—I hope not. It is a very important report, and I hope it will be gone through in order.

The question was announced on the motion of Mr. Landon.

Mr. E. BROOKS—I rise to a question of order. Under the rules, the report must be read.

The CHAIRMAN—The Chair decides the point of order well taken.

The reading of the report was continued to its conclusion, when the SECRETARY proceeded to read the first section, as follows:

SECTION 1. The Assembly shall have the power of impeachment, by a vote of the majority of all the members elected. The court for the trial of impeachments shall be composed of the President of the Senate, the Senators, or a major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment and punishment according to law.

Mr. VAN COTT—The first section is identical with the first section of the sixth article of the existing Constitution, and it is substantially identical with the corresponding provisions of the Constitution of 1821. I suppose the committee is ready to pass upon it without discussion, and I, therefore propose its adoption.

There being no amendment, the SECRETARY proceeded to read the second section, as follows:

SEC. 2. There shall be a court of appellate jurisdiction, called the court of appeals, composed of seven judges, who shall be elected by the electors of the State, and shall hold their office during good behavior until the age of seventy years. They shall designate one of their number as chief justice, who shall act as such during his continuance in office. Whenever a vacancy shall occur in the office of chief justice, it shall be

filled by the judges of the court from their number. The judges of the court of appeals shall have power to appoint and remove a clerk of said court, a reporter thereof, and such attendants as shall be authorized by law.

Mr. SMITH—I move to substitute for this section sections 2 and 3 of document 117.

The SECRETARY read the proposed substitute as follows :

Sec. 2. There shall be a court of appellate jurisdiction, called the court of appeals, composed of seven judges, who shall be elected by the electors of the State, and hold their office for fourteen years. The judges first elected shall be so classified that one shall go out of office and his place be filled by a new election at the end of every second year.

Sec. 3. Any five of the said judges shall form a quorum, and the concurrence of four shall be necessary to a decision. They shall, from time to time and as often as necessary, designate one of their number as chief justice. They shall also have the appointment, with the power of removal, of the reporter of the court and of such attendants, other than clerk, as may be authorized by law.

Mr. SMITH—It will be perceived by those who have listened to the reading of the sections, that taken together they are substantially the same as section 2 of the article under consideration, with this exception, that the seven judges provided for are to be elected, and are to hold their office for the term of fourteen years, instead of for life, as provided for in the majority report. I am induced to offer this amendment for the reason that I doubt very much whether the people are prepared to return to the system of life tenure for judges. I am aware that there are some strong reasons that can be urged in favor of it, and that doubtless will have great weight with the members of the Convention, as they probably had with the very able committee who have considered this question and presented this report. But there are also strong objections to it. If an incompetent man be elected for life, he is fixed upon us; there is no escaping from him unless he should be guilty of some overt act—some malversation in office. In other words, if a bad man comes into that office his vices are stereotyped for us and there is no escape from him during his life. If, on the contrary, a judge be elected for a term of years, and prove incompetent or unworthy, when his term shall have expired he will be out of the way and a suitable man can be elected in his place. There is another reason which operates on the minds of some in regard to life tenure; I mean the belief that the tendency of it is to make the incumbent lazy, to use a plain Saxon term. Thomas Jefferson said that man is a lazy animal, and there is great truth in it. His tendency is to shirk labor unless under a pressure, and where a judge is elected for life there is a great temptation to indolence and laziness in the performance of his duty. It will be observed by those who have read this report through that there is a provision in it for a commission to finish up the business of the court of appeals, which commission may be revived in ten years, if the business of that court shall have accumulated to such an extent as to make the

commission necessary. Now if we elect judges for life, and make this provision for the commission as a kind of tender to the court of appeals, I greatly fear that at the end of the prescribed term there will be an accumulation of business, and it will be necessary to call this commission into existence. On the other hand, if judges shall be elected for a term less than for life, and if certain other provisions be adopted which are reported both in the majority and minority reports (differing only in some slight particulars), I have no doubt that one court of appeals will be amply sufficient to do all the business. There are other reasons which might be urged in favor of this view—reasons which I would like to state, but our time is so limited that I am unwilling to trespass longer upon the committee now, especially as I have occupied some time to-day on another question. I leave this matter, therefore, with the committee, and have no doubt that there are other gentlemen present who are prepared to discuss it.

Mr. FERRY—Would a further amendment be now in order?

The CHAIRMAN—An amendment is in order.

Mr. FERRY—Then as a substitute for the section, I move the adoption of section No. 2 of the substitute offered by me, which will be found in Doc. 121.

The SECRETARY read the proposed amendment as follows :

Sec. 2. There shall be a court of appeals composed of seven judges, to be elected by the electors of the State. Provision shall be made by law for designating one of the number so elected as chief judge. They shall be classified so that one of the judges shall go out of office at the end of every two years. After the expiration of their terms under such classification, the terms of their office shall be fourteen years. The judges of the court of appeals shall have power to appoint and remove a clerk of said court, a reporter thereof, and such attendants as shall be authorized by law. The judges of said court shall reside, during their entire term of office, at the place where the court shall be held, and such court shall be always open.

Mr. FERRY—The committee will observe that this amendment resembles very nearly the proposition of the minority report, with this exception; it provides that the judges of the court of appeals, seven in number, shall hold their office for fourteen years, one going out of office every two years, and that they shall reside during their entire term of office at the place where their court shall be held, and that their court shall be always open. This last provision is, in my judgment, one of the most important that could be made, and will do more to remedy the evils complained of in our judicial system than any and all others combined. We know, and every body knows, that the chief cause of complaint is, that our courts are so blocked up, that they fail to do our business, and that suitors and lawyers have to come and sit about the courts from day to day, wasting their time in waiting one for the other, or waiting for their cases to come on, and we know that the court of appeals, in particular, is thus blocked up with business. Now, the way I propose to reme-

dy the evil is, to have a court that shall be always open; and in order to do that it is necessary to have this provision: that the judges shall reside at the place where the court is held. In my own practice I have seen enough of the operation of the present system to convince me that the judges are very unfavorably situated to entertain causes and hear arguments, when they are attending court at the place where they do not reside, and when they are contemplating going to their homes in some other locality. Under such circumstances they make poor listeners. It is not pleasant, to say the least, for counselors to talk to men who are impatient, as under the present system our judges often are. Now, if we want to insure the transaction of the business of the court of appeals, which has become so important in this State, it seems to me clear that the judges of that court should devote their entire time to it. It will not be necessary that all the judges should be present at the same time. You may make a quorum consist of five members, so that two can be absent at a time; and thus it will not be necessary that the whole time of all the judges shall be devoted to the official business they have to perform; but it is very clear that most of their time must be given to the public and even then they will have all that they can well do, and I would put the judges in the position to do this and do it pleasantly both for themselves and for those who argue causes before them. I would make them reside at the place where the court is held. Let them come to Albany if the court is held here. Let them reside here. Let that be their home and you will obtain this object. Their home will be here, and when they get up in the morning, surrounded by their families, they can attend to their ordinary duties and then go out to their court room and hear the causes that come before them patiently and then return to their homes and consider the cases and decide promptly. In this way the relations between the counsel and the court will be much more pleasant than under the present system, and indeed I know of no other way to attain these results except this. It seems to me, it ought to be manifest to everyone that the business of the judiciary in this State has got to be important enough for us to establish courts whose judges shall devote their whole time and attention to it. Under the present system, they do not do this to the extent that is desirable and consequently, the business is not accomplished with reasonable dispatch. We have four terms of the court of appeals in the year. The judges come here and sit from two to four weeks, seldom so long as four weeks, and that is all the time they spend in the court during the year. They then go home to attend to other matters and perhaps consider their cases there; and this is the way business is accumulated. Now, sir, is it not one of the most obvious dictates of common sense that those who elect judges should make it their duty to attend exclusively or mainly to official business—the business of the people—where so much must be done necessarily by some one. I do not believe the business can be done in any other way. It needs but a little reflection for even a layman to see the advantages of this system. I have watched this matter

attentively for many years. I was in practice previous to our present Constitution, and I have watched the matter ever since, and have frequently made this suggestion when the subject has come up for discussion; and I attempted once, in the Legislature of this State, to effect a partial reform by compelling judges of the present court of appeals to keep open court; and while I heard plausible objections to it, I was told by some of the most eminent lawyers in Albany, that the plan I proposed was an excellent one, which they would very much like to see adopted, but that the objection of the present judges was, that they were not paid enough to enable them to come here and stay the whole year; and for that reason my proposition did not receive so much favor as it otherwise would have done; but on all hands where I consulted others about it, I found that it was generally approved of, as a good and practicable proposition; and if any gentleman will try to state any reason in the world why we should not have a court so constituted, as to do the business, or how we can get such a court without requiring the judges to devote their time exclusively to the business of the people, he will try to do what I think is impossible. I have provided corresponding provisions in regard to other courts of the State, but for the present it is sufficient to call the attention of the committee to this proposition relating to the court of appeals.

MR. SMITH—I suppose it will be perceived by gentlemen that this imposes a very arduous duty upon the judges. In the first place, no matter where they may reside they are to be obliged to pull up stakes and come to Albany, and here remain and hold their court open all the year. It strikes me as imposing rather severe conditions upon them, and I trust we shall not adopt it.

MR. LUDINGTON—There are other objections that occur to me about this proposition. Under the new Constitution, the court of appeals will probably hold their terms at different places in the State, as they now do at Albany and New York city periodically, and if the provision proposed by the gentleman should be adopted, it will impose upon them the additional necessity of changing their residence periodically to the different places where the terms of their court are to be held. For this reason it seems to me to be utterly impracticable to adopt and carry out successfully any such rule as that suggested in the substitute offered by the gentleman from Otsego. [Mr. Ferry].

MR. BERGEN—It appears to me that if the section as offered by the gentleman should be adopted it would operate very unjustly. If the court should decide to hold its sessions at Albany the judges could not reside outside the boundaries of the city. A judge, therefore, could not reside in Greenbush, across the river, nor in Troy, nor anywhere but in the city. This Convention is composed largely of gentlemen of the legal profession, who are no doubt competent to deal wisely with this question, but I ask them whether they think it right to provide by the Constitution that a judge of any court shall be confined to one locality and compelled to reside in any one town. I think this proposition would operate very severely and harshly upon them, and if I were of that profession I certainly would not be

willing to have such a rule imposed upon my brethren who were elected to this office.

Mr. BECKWITH—There is another objection that strikes my mind with more force than any that has been urged: namely, the provision requiring the judges to hold their court open at all times. Every one who is acquainted with the business of the legal profession knows that it is but a small part of the office of a good judge to listen to the arguments of counsel. He must spend in his office a large portion of his time in taking these arguments into consideration, in examining authorities and in writing out his opinions; and for these reasons I think this provision should not be adopted.

Mr. GRAVES—I wish to strike out—

The CHAIRMAN—No further amendment is now in order.

Mr. FERRY—I have not yet heard from any of the gentlemen who have objected to this substitute that there is any peculiar hardship about it, except that it requires something of the judges which they cannot conveniently do. Now, I ask if it is not evident to every man here, that a court that is going to do the business of the State must accommodate itself to the business. My proposition makes the same provision for a commission which is made by the majority report to do up the business already on hand; and if we start under the new system, with the court always open, in my judgment, the business of that court can be done promptly, cases will be promptly heard and decided, and the calendar will be kept clear. The business of the court of appeals will be done as promptly as that of the surrogate's court, which is always ready to hear the arguments or to consult about and dispose of cases as they come up. I submit to my professional brethren if it has not become one of the greatest bores to the profession that we have to go to court and do nothing but wait for somebody else to do something, thus spending unprofitably our time and the time of parties, witnesses and jurors, while the business of the courts is constantly accumulating? But this monstrous absurdity exists (and the people have become accustomed to it, because it has come down traditionally to us) of having, perhaps, a hundred different cases set down to be tried at a certain hour on a certain day; and in the city of New York, I believe, the calendars have sometimes two or three hundred cases set down for a given day, though, I understand, that there they pretend to have something like a day calendar. Now, just look for a moment at the absurdity of setting down a hundred different cases and having the counsel and witnesses and parties all there together to try their cases at a certain hour. With the courts open, under this proposition, of mine, whilst your case is fresh in your mind you can come to the court, which is open and ready to hear you and to decide your case, and thus cases will be promptly decided, and you can keep the calendar clear. Now, sir, although this provides that the court is to be always open, it does not follow that it is to be construed literally, or that if you argue a case in the forenoon and the judges think it necessary to decide it at once, they may not adjourn and go home and do so.

The idea is that the court is to be open at all times for business that can be done *ex parte*; but if the judges, after having heard an argument, wish to decide immediately, or wish to consult the authorities, or to consult with each other, they can easily do so. That matter can very soon be reduced to a system. Under this proposed plan we should have judges whose business it would be to attend exclusively to the business of the people of the State, and to transact it; and unless gentlemen here can show that this kind of devotion to the people's business is not necessary, it does not seem to me any very great hardship to require the judges to hold court all the time, and that they may be able to do so, to reside at the place where the court is to be held. One gentleman says that if the courts were held here, a judge could not reside across the river. Now, of course, it is very evident to every one, that I do not care where they live, provided they do the business. If they could keep the court open and attend to the business, they might live in Buffalo, so far as the mere matter of residence is concerned; but the idea of this provision is, that you cannot talk to the judge profitably, and that the judge cannot listen to you profitably, unless he can listen to you patiently and contentedly, feeling that he is at home. I do not propose to subject these men to any great hardships. We expect to pay them for their time, and unless this plan is adopted I do not see how the business is to be done.

The question was put on the adoption of the substitute offered by Mr. Ferry, and it was declared lost.

The question then recurred on the substitute offered by Mr. Smith.

Mr. BAKER—If an amendment is in order I propose to strike out "seven" and insert "nine" before the word "judges," in the second line, and in the fourth line to strike out "fourteen" before the word "years," and insert "twelve." As I understand the amendment of the gentleman from Fulton [Mr. Smith], we should strike out "four" in the second line of the third section, and insert "five," so that five members will be necessary to constitute a quorum of the court.

The CHAIRMAN—Is that the whole of the amendment proposed by the gentleman from Montgomery [Mr. Baker]?

Mr. SMITH—Do I understand the gentleman to say that he moves to strike out "four," in the third section, and substitute "five"? Does he not mean to strike out "five," and substitute "six"? Because if you increase the number of judges from seven to nine, it will require six for a quorum.

Mr. BAKER—My amendment is to strike out the word "seven," in the second line of the second section, and insert the word "nine;" to strike out, in the fourth line of that section, the word "fourteen," and insert the word "twelve;" and in the first line of the third section, to strike out the word "five," and insert "seven;" and in the fourth line of that section, strike out "four," and insert "five." My object in proposing that amendment is based upon a different theory, probably, from that adopted by the committee in organizing this court. It is to create a court strong enough

and large enough, in its numbers, to discharge the duties that will devolve upon them in deciding appeals; and at a later stage in the discussion of this report, I shall propose an amendment to prohibit the creation of the permanent commission provided for in the report of the committee. I believe, sir, that there is no reform which the people more imperatively demand, than that we shall have a court that can discharge the duties devolving upon it; and, it seems to me, that in creating and organizing this court anew, we may as well organize a court that shall have the physical power and numerical force to dispose of the business that shall come before it. It is said by gentlemen, and probably it was the idea acted upon by the committee in proposing this organization of the court, that the State is too large for us to suppose that we can create a court of appeals that will discharge all the duties that must devolve upon it. Now, sir, whenever the State becomes so large that we cannot have one court to promulgate its laws, so far as judicial decisions are concerned, we had better divide the State, for it must be apparent to the legal profession as well as to the lay members of this Convention, that this multiplication of courts has been one of the greatest evils under which we have labored since the adoption of the Constitution of 1846. Theoretically, we have but one supreme court, but practically we have eight supreme courts, promulgating eight different theories as to questions of practice, and frequently different principles of law, as various and diverse as it is possible for them to be, so that this division, or rather multiplication, of the court is practically the construction of an octagonal court promulgating octagonal law and having the direct effect of accumulating the present enormous calendar of the court of appeals, which is now so unmanageable. Now, in my judgment, if this Convention shall discharge its duty faithfully to the people and create one court, which will promulgate one law, so that the people of the State will know what the law is, it will perform the highest duty which it was sent here by the people to perform. I think there was no other question that had so direct an influence in inducing the people to vote for this Convention as the question of remedying the deranged and disorganized condition of the judiciary system of the State; and were it not that the people generally, as well as the legal profession and the judges themselves had felt the imperative necessity of calling this Convention to remedy that, I do not believe they would have convened it for any other purpose. It is now in the power of this Convention to adopt a system which will get rid of this conflicting law in our State, and which will tend to give us one system of law in principle and in practice. In the amendment that I propose, provision is made for a court of appeals consisting of nine judges, because I believe that number will be sufficient to discharge all the duties, and to dispose of all the business of that court. I know that I shall be answered by some gentlemen that the State is too large and the business so great that the court cannot dispose of it. I call upon gentlemen who have acted as judges in the supreme court

to answer this question, whether, as the court is now constituted (and I speak both of the supreme court and the court of appeals), it is the custom of judges, each one to study each case that is argued before them as a court and each one to master the questions presented, or whether it is not the practice for each judge to take his particular case or portion of the business home to his office and there examine it, make up his report or decision upon it, and when consultation term comes, to read his decision to his colleagues, and get their assent or dissent by a nod or a shake of the head? Each one nodding and saying "I concur;" or I "dissent," and whether such assent or dissent so obtained does not constitute the opinion of the court? It is seldom, except in very important cases, that all the judges examine each case; but as I have said a particular case or portion of the cases argued is given to each judge who takes it as his part to examine and decide.

Mr. WAKEMAN—Each case is submitted to two judges.

Mr. BAKER—I am informed by my friend, who is more familiar with the matter than myself, that it is customary to pass a case over to two judges to be examined and decided by them, but that does not change the principle. Now, if litigants having business before the court do not at present get the benefit of the judgment—the mature and deliberate judgment of all the judges—why, it seems to me that one court may just as well discharge all the business; and it could do so by increasing the numerical force—the individual members of the court writing out their decisions, reading them to their colleagues at consultation, and getting their approval or disapproval, and that constituting the decision of the court. I do not see why that cannot be done just as well under the plan I propose as under the plan we are now practicing, or the one proposed by the Judiciary Committee. In regard to the question of the duration of the term of office, as was well remarked by the gentleman from Fulton [Mr. Smith], if we get a man to serve the people faithfully as judge for twelve years, if he is a man below the meridian of life, we can elect him again; and I believe that since the adoption of the Constitution of 1846 it has almost always been the practice to leave the nominations of judges of our courts to members of the legal profession acquainted with their ability, integrity and fidelity to duty; and I believe it is a fact that in almost every instance where a judge has given even tolerable satisfaction he has been renominated. Unless there has been some good cause to distrust his capacity or integrity, a judge has seldom failed to secure a renomination since that time; and so it will be in the future. But on the other hand, if we get a bad judge it seems that twelve years is quite as long as he should inflict his bad qualities upon the people. I am therefore in favor of reducing the term, as proposed in the minority report, from fourteen to twelve years.

Mr. GRAVES—I desire to ask the gentleman from Montgomery [Mr. Baker], if the term of eight years, which is now fixed, is not sufficiently long to test the qualifications of the incumbent of the office so as to determine whether he is fit for re-election or not?

Mr. BAKER—Undoubtedly it is.

Mr. GRAVES—Is not that a better length for the term than twelve years?

Mr. BAKER—I am not in favor of a very long term, and—

Mr. E. A. BROWN—As the gentleman has mentioned nine judges, I suggest that he should fix the length of the term at nine years, so as to let one be elected every year.

Mr. BAKER—I proposed this amendment for the purpose of drawing out the opinion of this Convention as to the propriety of a life term, a term of fourteen years, or a shorter term, and not for the purpose of presenting a perfect section. If it is the judgment of this Convention that we had better shorten the term, the details as to the time when each judge's term shall expire, and the perfecting of the section generally, can be arranged afterward.

Mr. NELSON—Mr. Chairman, to my mind the report which the Convention is now considering is, so far as the people are concerned, the most important provision to be inserted in the Constitution. For one I am free to confess that if this report or rather if the organization of the courts when this Convention shall have completed it, meets my approbation, that consideration more than any other would induce me as a private citizen, to give my support to the instrument. On the other hand, if this Convention organizes a judicial system of which I cannot approve, I shall deem it my duty as a citizen in the community in which I live, to give my vote and my influence, and to do every thing so far as in me lies, to defeat the Constitution which shall embody such a judicial system. Now I submit to this Convention the question whether in the experience we have had since the adoption of the Constitution of 1846, the bench of our supreme court, looked at critically, will not bear comparison with the supreme court of any of the other States, or the supreme court, prior to the Constitution of 1846. The judges who have presided in our supreme court have been paid by the people of this State \$2,500 per year for their services, which latterly has been increased to \$3,500; and sitting upon the bench they have looked down upon a bar, in very many of the counties of the State, in which not only one to five, but ten to fifteen lawyers were practicing before them with incomes twice, three times, or four times their salaries. I desire to suggest that eight years is long enough for a bad judge. Judges are bad not merely from dishonesty and corruption; they are bad when they fail to perform their duties; and judges are bad and fail to perform their duties when they neglect to give the time and care and also the patience that should be required of them. Within the second judicial district in which I live, although not an old member of the bar, I look back over twenty years of the history of the men who have sat upon the bench, and I know that on the first day of June last, there was not a case undetermined in special or general term. The men who have occupied seats upon that bench were elected, by the people. Nobody ever complained that the term was not long enough, or that the men elected were not competent. When

I look back over the twenty years and pass in review the men who have held a place upon that bench, I also see in the history of political nominations for that place, that whenever any party, no matter what was its political strength (and the party to which I belong has always since 1846 had control of the political power in that district), nominated a man for the bench of the supreme court, if he was fit for the office he was elected, but if the people doubted the fitness of the candidate, they, in the exercise of their sovereign power, defeated the nominee without reference to politics. The people change with the times. The time has been in the history of the world when all men on entering a court deemed it a duty to bow with reverence and awe, if not to cringe and tremble when in the presence of the presiding judge. But that period has gone by. Our people expect in the court, first, learning and integrity. In addition to that, they expect patience and industry, and good manners. Good manners upon the bench are as creditable as industry. If you adopt a form of organization for the supreme court that will fasten upon the people of the State a judge for life, how on earth can they get rid of him, if he is a bad judge, but by one road—the charge of crime, brought forward and established by impeachment? If he has his pets and retainers, and shows his dislikes and prejudices, what can we do? Can we speak about it? Can we try him before a jury of judges for it? No, sir. It is natural for men, and it is natural for lawyers, to keep quiet, under insult and abuse, even when they see these pets and retainers and vagabonds about the court. Sometimes every male member of the family of the judge will hold some position under him. So far as my observation has gone, not a single voice has been raised in the second judicial district for a change in the term of office. I think that eight years is long enough to try a man. If he is a good man he will be continued. But if you fasten a man upon the bench who has freaks and notions and prejudices and ill temper, he may drive from practice a dozen of the leading minds in his district. It has been suggested that if you make the term too long, it will make the judges lazy. This is true. Place them in office for life, and they get along as comfortably as they can. By and by their duties become a weary, every-day trodden road. They become sometimes overbearing and tyrannical, and the time has gone by when the people or the bar will bow down, as they have been compelled to in former times, to men who happen to hold a seat on the bench. I desire to make this suggestion; instead of shutting out from the bench the men who are the bright and shining lights in their profession, whose income therefrom enables them to live not only a comfortable but an extravagant life if they wish, but are unable to hold the office of judge by reason of the little pittance now allowed as compensation to the judges, let the great State of New York, if she errs in compensating her servants, err on the side of liberality. Instead of \$2,500 or \$3,500 let her pay the judges of her supreme court at least \$7,000; for that is the income of many men who do not imagine or dream that they will ever obtain a seat on

the bench of the supreme court. Not only that, but every man owes a duty to himself and his family. Men in the legal profession have often come up, as the rough expression is, "afnot and alone;" and although they become an honor to their profession, and its brightest ornaments, by their untiring industry and zeal, and hold a position of which any man might feel proud, yet their duty to their families and to themselves, will not allow them to throw aside their professional income to accept a seat on the bench, no matter how well qualified, because the income of the position has been so paltry that it would not give them a support, and they would not have a farthing when they left the bench. I trust that we shall be able to present a system to the people of this State, which will not retain in office for life a man who doles out the patronage of the court to his pets and favorites. Eight years of experience is long enough. We can then learn whether they are good or bad. If they are good, the good sense of the people will retain them; and if they are bad, they will go out. Then fix the salary so that it will remunerate the best men in the profession. Then a seat on the bench will be sought after by men, whom you cannot induce to take seats there now.

Mr. RUMSEY moved that the Committee rise, report progress, and ask leave to sit again.

The question being put upon the motion, it was declared carried.

Whereupon the committee accordingly arose, and the PRESIDENT *pro tempore*, Mr. ALVORD, resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Judiciary, and had made some progress therein, but not having gone through therewith had instructed their chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

On motion of Mr. BERGEN, the Convention adjourned.

FRIDAY, November 22, 1867.

The Convention met at ten o'clock A. M., pursuant to adjournment, the PRESIDENT *pro temp.*, Mr. ALVORD, in the chair.

Prayer was offered by Rev. G. C. HECKMAN. The Journal of yesterday was read by the SECRETARY, and approved.

Mr. GREELEY presented the memorial of seventy Methodist clergymen of the city of New York, representing one hundred thousand people, protesting against any action of this Convention looking to the overthrow of the excise law.

Which was referred to the Committee on Adulterated Liquors.

Mr. S. TOWNSEND offered the following resolution:

WHEREAS, A body called under an express provision of the Constitution of this State, with powers only limited by the Constitution of the United States, in its requirement for a republican form of government in each of the States, must of necessity possess the right by ordinance or resolution to control

the requisite means and facilities to insure in their deliberations the most beneficial results for the interest of their constituency, therefore be it

Resolved, That the resolution assenting to the acceptance of the Comptroller of this State of the proposition of the officers of the Commercial National Bank of the city of Albany to furnish, on interest—that institution being at this time one of the depositories of the funds of this State—the required means to supply the necessary disbursements of the Convention, be reconsidered.

Which was laid on the table at the request of the mover.

Mr. ANDREWS—The consideration of the report of the Judiciary Committee has been somewhat unexpectedly reached by the Convention. There are many gentlemen, members of this body, who take a deep interest in that report, who by reason of engagements in the courts during the present week, are unable to be present. I desire to suggest the propriety, and will move that the further consideration of that report in Committee of the Whole be deferred until Tuesday morning next, or as soon thereafter as the consideration of the special order for that time shall have been concluded. I understand that there are several reports ready for consideration, and while this will not, as I suppose, detain the Convention, it seems to me that, under the circumstances, it would be entirely proper that this motion be passed.

Mr. A. J. PARKER—I would suggest to the gentleman to change it to Monday; to take the earliest possible day next week, because Thursday we shall be broken up.

Mr. ANDREWS accepted the modification to his motion.

Mr. VERPLANCK—I would like to inquire the effect of that upon the special order for Tuesday.

The PRESIDENT *pro tem.*—The Chair is of opinion that the special order for Tuesday cannot be interfered with. The Chair understood the motion to indicate that the special order for Tuesday should not be interfered with. If, therefore, this should be postponed to Monday, when the time for the special order for Tuesday shall come, it will take precedence.

Mr. SMITH—Before voting upon this motion, I should like to know what other business is ready for the Convention. I shall be entirely willing to consent to a postponement if there is any other business ready. But I am not willing to delay the business of this Convention because gentlemen may be absent whose faces we should be very glad to see here, and have desired to see for many days, but have not been blessed with the sight.

The PRESIDENT *pro tem.*—By reference to Doc. No. 128, it will be seen that there are five reports on the general orders.

Mr. VERPLANCK—This proposition is not for the accommodation of the gentlemen who are absent. It is for our benefit. We need their aid in perfecting the Constitution to be adopted. The gentlemen of the Judiciary Committee who are not here, and whom we desire to have here, have for weeks had the matter under consideration, and it is very important that they should be in their places.

Mr. WEED—Personally I have no objection to postponing to some future time, Monday or Tuesday; but it seems to me, that if we do postpone it, we are going to chop the business of the Convention all up, and that it will not facilitate our business. If we make this a special order for Monday, we shall get but a little way, and then the special order for Tuesday will supersede it, and it will have to go over until the disposition of the report of the Committee on Finances and on Canals. It seems to me, that if it is to be postponed at all, it ought to be postponed until Tuesday, so that whatever we take up to-day we may go through with, or nearly through. Certainly we shall not, if we leave it to take this up Monday morning. And then this must give way on Tuesday morning for the special order for that day. I hope the gentleman from Onondaga [Mr. Andrews] will adhere to his original motion, if we are to go on at all.

Mr. A. J. PARKER—Under these circumstances I hope we shall not postpone it at all. I regard it as the most important report before the Convention; and it certainly ought to be acted upon at the earliest possible day. I very much fear that if we commence postponing it, by deferring it to next week, other reports will take precedence, and this will be thrown over to a very late time. I hope, therefore, that we shall proceed to-day and make what progress we can, and leave the remainder to be disposed of as soon as it is practicable.

Mr. FERRY—I will inquire what report is next in order?

The PRESIDENT *pro tem.*—The report of the Committee on Charities.

Mr. CURTIS—I hope that the consideration of this report will not be postponed. Of course, this morning very little progress can be made; but we can begin its consideration, and learn the opinions of gentlemen now upon the floor, and then we can let it go over until next week. If gentlemen who are absent wish to be here when it is considered, they must make their business conform to the pleasure of the Convention, and not expect the Convention to conform to their convenience.

Mr. LUDINGTON—I hope the consideration of the report of the Committee on the Judiciary will not be postponed, especially if the report of the Committee on Charities is to be taken up, for the reason that the chairman of that committee [Mr. E. Brooks] has left this morning, with the expectation that we would proceed with the report of the Committee on the Judiciary. I should regret very much to have the report of the Committee on Charities taken up in his absence; and I see no reason why we should not proceed with the consideration of the report of the Committee on the Judiciary.

Mr. GREELEY moved that the proposition to postpone be laid upon the table.

Mr. RATHBUN—What effect will that have upon the report?

The PRESIDENT *pro tem.*—The Chair is of the opinion that it carries the report with it.

The question was put upon the motion of Mr. Greeley to lay the question to postpone on the table, and it was declared lost.

Mr. STRATTON—I would inquire what is the next order after the report of the Committee on Charities? I understand that cannot be discussed to-day in the absence of the chairman of the committee [Mr. E. Brooks], who has left.

The PRESIDENT *pro tem.*—The report of the Committee on Future Amendments and Revision of the Constitution.

Mr. HALE—I was informed by the chairman of that committee, who is not in his seat this morning, that there would be no objection on his part to taking up their report if gentlemen choose to do so.

Mr. KETCHAM—I do not see any reason at all why we should postpone the consideration of this report on the judiciary because there are several members who are not here, being lawyers and being engaged elsewhere. Next week other lawyers, who feel just as much interest in the revision of the article, will be obliged to be absent. I think if we go on with this it will insure an early return to this Convention of those members of the committee who are absent. I hope we shall not vote for its postponement.

Mr. WEED—What is the day now named in the resolution to postpone?

The PRESIDENT *pro tem.*—Monday.

Mr. HALE moved to amend by substituting Tuesday.

The question was put on the motion of Mr. Hale, and it was declared lost.

The question was put on the motion of Mr. Andrews to postpone until Monday, and it was declared lost.

Mr. McDONALD offered the following as a proposed section upon taxation, and asked that it be laid on the table, and that it be printed for the information of the Convention:

Direct taxes within this State shall hereafter be levied, subject to the following rules.

1. All property within this State (not *in transitu* through the State), including all choses in action, owned by, in possession of, or controlled by any resident person, partnership, association, or corporation, shall be equally assessed and taxed according to the actual value thereof.

2. All deductions on account of debts shall be uniform as against the assessment of real or personal property.

3. All exemptions shall be uniform throughout the State, and the bill authorizing the same must receive the approval of two-thirds of all members elected to both houses of the Legislature.

4. Every resident person, partnership, association, or corporation, shall make a sworn return of all taxable property owned by, in the possession of, or under the control of him or it.

The paper was laid upon the table, and ordered to be printed.

Mr. VERPLANCK moved a reconsideration of the vote by which the rule was altered in reference to demanding the yeas and noes, and that the number be increased from fifteen to twenty.

On motion of Mr. VERPLANCK, the question of reconsideration was laid upon the table.

The Convention again resolved itself into Committee of the Whole on the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN announced the pending question to be upon the amendment offered by Mr. Baker.

Mr. McDONALD—I see that the effect of this section is to increase the number of judges from seven to nine. To that change I am opposed, for the reason that all the members of the committee are unanimously of the opinion that seven judges can do the work properly. It seems to me, with such an opinion, after investigation, we ought not to be willing to add two officers who according to their opinion are unnecessary, during the continuance of this Constitution if it shall be adopted. As I understand, one reason for this conclusion is this, that according to the report of both committees, by excluding from the general term any judge who has heard a cause, and by the provision enlarging the general term to five instead of three judges, it is supposed and believed that both the profession and their clients will be better satisfied with the decisions and they will not regard the general term as now, merely as a stepping stone, to get to the court of appeals. I think that the increase of the number of judges who shall compose the general term will of itself have that effect, and that thus these two additional judges proposed for the court of appeals will not be necessary.

Mr. WAKEMAN—I am opposed to increasing the number of judges. I have prepared an amendment that I shall probably offer at a proper time. I propose to continue the number of judges at seven, and after the word "judges" in the second line, to amend, by adding that six of them shall be elected by the electors of the State, and hold their offices for twelve years, instead of fourteen years, and to offer an amendment authorizing the Governor to appoint a chief justice to hold his office for the period of twelve years. If we fix the term of office at twelve years we shall have no difficulty whatever in having a court of appeals composed of seven judges, every alternate year electing a judge; and by the appointment by the Governor, of a chief justice the difficulty will be entirely rid of with reference to the number of judges. It strikes me that it is important and proper that the chief justice of this court should be appointed by the Governor, with the advice and consent of the Senate. The Governor can have the opportunity to look over the entire State and he can hardly make a mistake in selecting some proper man for that elevated position. Last evening, the gentleman from Dutchess, I think [Mr. Nelson], indicated that he was in favor of reducing the period to at least eight years. It seems to me that in view of the process of electing judges, electing one every alternate year, it will take some time to get a permanent board, and in that way we shall have an opportunity very readily to ascertain who are proper men for the place, and that a term of twelve years will not be too long under such circumstances. It is said that by short terms we shall be able to reach them before the people. Undoubtedly; but they will be short terms, in the first place, mainly. With the experience we have had in the elective judiciary within the last twenty years, I think there will be no real difficulty in selecting a court who will do honor

to themselves and to the State. We have been eminently successful on the whole in the election of our judges. I shall vote against the pending amendment of the gentleman from Montgomery [Mr. Baker], not because I am opposed to its theory, but because I prefer the amendment which I shall propose, for the reasons I have indicated.

Mr. CONGER called for a division of the question.

Mr. E. A. BROWN—I notice that the report of the majority of the committee—and, I believe, both the minority reports, certainly one—provides for commissioners of appeals, and for their continuing in office for three years, with a provision that, at the expiration of ten years, another commission may be appointed for the purpose of clearing the calendar. Now, if it is necessary to constitute this commission, it appears to me that the motion of the gentleman from Montgomery [Mr. Baker] to increase the number of judges to nine is eminently proper. By so doing you get rid of the expense and the machinery of this commission. Nine judges may be divided, and if necessary hold two courts, either sitting at the same time, or one following the other; and as a matter of economy, as well as expediency and uniformity in the administration of justice and in the decision of cases, it seems to me that it would be desirable to get rid of these commissioners of appeals. Then, as to the term of office. For my own part, I am entirely indifferent whether the term be eight years, nine years, twelve years, or, if you please, fourteen years. If eight years is long enough, certainly it is short enough; and nine years will not be very far out of the way—only the addition of one year. And the change in the court of one judge each year, if the same judge shall not be continued in office, will not be a very great change. It strikes me that one of the greatest evils of the present system is the sudden and great changes that are made in the constitution of the court. One-half of it uniformly goes out on the 1st of January, every year—four going out and four more coming in; and it has happened, I believe, that six new judges have taken their seats in the court of appeals on the 1st of January. On the 1st of January next, five new judges will take their places on the bench. Even though the judges of the court of appeals may have had long experience upon the bench, still it is a great change. But if we so frame this article, that one judge shall come in fresh upon the 1st of January in each year, it will be comparatively a slight change, but a sufficient change, it seems to me, for the court of last resort. By making the number nine, I think you get rid of the machinery of commissioners of appeal, get rid of the expense of it, and get rid of any difficulty as to the extraordinary length of the term of office; and you make the court sufficiently permanent in its character; and, I think, on the whole, it will be desirable that that amendment to the present system should be made.

Mr. A. J. PARKER—I have very little choice between the tenure proposed by the majority report—namely, until seventy years of age—and that proposed by the substitute that is offered, making the limitation fourteen years. I shall

only desire, in taking either, to adopt such a plan as to save the necessity of re-election. I would place the judge in an independent position—either elect him until he is seventy years of age; or, if you choose, elect him for the term of fourteen years. But in that case I would add a provision that he should not be eligible for a second term. I think he should be placed in the position not only to act independently, but where he shall not be suspected of acting otherwise; and, in that point of view, it makes no sort of difference whether he holds until he is seventy years of age or whether he holds for a term of years, with a provision in the Constitution that he shall not be again a candidate for the office. The great object is to make him independent. As to the length of the term, I should prefer fourteen years if he is to be ineligible to a second term. I believe that as long as would be desirable, and, in fact, quite as long as the usual term of judges holding seats until they are seventy years of age. In looking over the time that judicial office has been held in the United States, fourteen years is found to be about the average term; and that is one reason, I suppose, why that measure is suggested by a member of the committee in the substitute proposed. I do not care whether we take the majority report or the substitute for the term of office, but I think the judge should be ineligible, and I prefer a term as long as fourteen years. I think we should induce a man to go upon the bench with the understanding that he is not to be again elected, and thus I think we should secure a better class of men. Make the term long enough to induce them to take it without the hope of re-election. I do not like the idea of short terms and candidates for re-election. In a growing State like this there are constantly new questions arising and frequent infringements of the Constitution by legislative action, and we must look to the judiciary to give a construction to these acts and to take very independent action in regard to them. I would place the judges in a position where they cannot be biased by any partisan influence or popular favor, and, above all, where they shall not be suspected of having their opinions influenced at all by public opinion upon either side. That can only be done by depriving them of the opportunity of re-election. As to the number of judges, we have had eight heretofore. I believe all persons now agree that it is better that there should be an odd number, and, therefore, they propose either seven or nine. I prefer seven because I believe that is the best number for a working and efficient court. My friend who spoke last [Mr. E. A. Brown] prefers nine, and suggests that two courts of co-ordinate jurisdiction may be in session at the same time—two courts of appeals acting at once. Sir, I am entirely opposed to that idea. I believe it to be very prejudicial to the public interests. With two courts of equal jurisdiction sitting at the same time—it would be impossible that they should agree in opinion. I know it has been said that where they differ they may meet and compare opinions and reconcile their differences. That is impracticable. There must be but one court in the highest tribunal in the State—one independent

appellate tribunal. The moment you make two you lessen the authority of the court and weaken the confidence necessary to its usefulness. You no longer have one fixed decision which becomes the law of the land, but you throw all questions open to differences in the courts themselves. I believe it would be prolific of great evil in the administration of justice. I prefer seven because it is a convenient number; because with that number you can always secure the necessary quorum, because you can avoid the necessity for a re-argument arising from an equally divided court; because it is not too large to work well and not so small as to lack the public confidence. I believe the judgment of this committee, therefore, will be in favor of seven. There are some other things that were proposed by the substitute, which I shall certainly oppose, and I do not know but this discussion covers the entire ground. I believe that both agree that these judges shall designate their chief justices, and I do not know but what they agree as to the mode of filling vacancies. The majority report proposes that the judges of the court of appeals shall have power to appoint a clerk of the court, and such other attendants as may be authorized by law. I prefer that to the provision in the substitute. It proposes, too, that they shall have the power of removal of such attendants as are authorized by law. Why should they not have the power of appointment and removal of their own clerk? It seems to me, that should belong to them. The clerk of the court is then clerk for the discharge of the duties they assign to him. He makes the necessary entries, records and files their judgments, and is really under their direction. I think they should have the entire control over his action, so that if he be unfaithful, they may remove him and appoint another in his place. I believe the court of appeals, as proposed by this bill, will be a vast improvement upon the system we now have. I have no doubt that either of these, the substitute or the original report, will be an improvement, but I believe, especially, the one proposed by the majority of the committee will be a great improvement. We have seen under our present system that the want of permanency is the great evil. Four judges come in and go out every year, and every second year five new judges take their places upon the bench. The consequence is that the court is constantly shifting and changing; and it is impossible to secure uniformity of thought or action. Four judges come in from the supreme court, unaccustomed to the discipline and habits of the court—because that I think important—and it takes them a whole year to get in good working order; and then they have to leave and others come in, and thus the court is constantly changing. Therefore it has been that so many cases have been doubted and overruled, and that the decisions have sometimes been found in conflict in the same tribunal. This great evil will be avoided under the system which we propose. Elect seven judges, to hold until they are seventy, and you have a permanent court, subject only to the casualties that will occur by death, and resignations, and whenever they do occur it will be simply necessary to fill that vacancy. The great body of the court is

permanent, like all other courts, and we may expect consistency and uniformity in its decisions. That, too, I admit, can be accomplished, to nearly the same extent—not quite—if you elect them for fourteen years and make them ineligible. The longer the term you give them, the nearer you come to the accomplishment of the object you have in view. It is said that the court of appeals has been overwhelmed with business and has not been able to accomplish all that was desired, and we now find upon the calendar a thousand cases that cannot be reached at the termination of the session. To what is that owing? We must recollect that when this court or appeals was organized twenty years ago, in addition to the new causes arising and entered upon the calendar of that court, they had all the old causes which were pending in the court of errors, from a hundred to a hundred and fifty in number, which went also upon the calendar for their decision; and upon a careful examination of all the causes that have since been appealed it is ascertained that notwithstanding that the court has decided all the causes that have been appealed under the present Constitution, except about one-seventh. They have fallen short of the full discharge of all the duty which it was desired that they should perform, to the extent only of about one-seventh. Now, we insist that in the single change that we propose to make by substituting four permanent judges instead of the four annually brought in from the supreme court, and returned to it—in that change alone we make an improvement which will much more than counterbalance the extent to which this court has failed in disposing of the calendar. In other words, I believe that we add to the working power of the court at least fifty per cent—much more than would be necessary to make up this deficiency of one-seventh—that being the extent of the deficiency that now exists. I believe that the court of seven judges, made permanent—I mean by that not changed annually—would be able to hear and decide every appeal that will be taken from the other courts of this State to the court of appeals. I have no doubt they will be able to keep the calendar entirely clear when it is once worked off, and I believe that that single feature alone will be enough to secure it that power which is so desirable. I do not think that it will add at all to its efficiency to make it nine judges instead of seven, but rather embarrass it, and I prefer, therefore, to adhere to seven; and I care not whether they sit for fourteen years or until seventy years of age. I have no doubt myself that electing judges to the court of appeals, if you elect men of proper experience for fourteen years, you will carry most of them beyond seventy years of age. I do not care which method is adopted if you will only place them in a position where they can act independently, and so that the court can be made permanent. I should prefer that this substitute should not be adopted, but if it is to be adopted, I propose that the person elected shall be ineligible for a second term.

Mr. BECKWITH—I am in favor of seven judges only. I think that number is preferable to nine. I am also in favor of limiting their term of office. Gentlemen of the legal profession are

probably satisfied from experience that the causes which have blocked up the court of appeals to the extent it now is, have not originated in that court. The difficulty, in my judgement, has risen in the supreme court and the manner in which that court has been organized. Not that I have any complaints to make of the judges of the supreme court. In my district we have, as a general thing, been well satisfied. But attorneys, and counselors, and their clients are not satisfied with trying a case before a circuit judge, and then, when it is carried up to the general term, having the same judge to sit in that general term, and to take part in that investigation and decision. If he is a man of considerable pride of opinion, having once examined it and come to the conclusion that he was right, it is almost impossible for any counsel to satisfy him that he is in error, even though he may be in error.

Mr. A. J. PARKER—Will the gentleman allow me to explain? I agree entirely with him as to the reason that he has stated; but if he will look at the terms of the report, he will find a provision that no judge hereafter shall ever sit in review of his own decisions. It covers that case which has occurred so frequently for the last twenty years, and every possible case that is likely to occur. There is no objection therefore, upon that ground.

Mr. BECKWITH—Even if that is the case, that is not the view in which I intended to present the argument; but it was in this view: that the seven judges provided for will be sufficient. The difficulty has been heretofore, not in the court of appeals, but in the supreme court; and, as I remarked, counselors and their clients, having had their causes tried before a circuit judge who has once examined it, are not satisfied when he comes into general term and takes part in the investigation there; and hence, many cases are carried to the court of appeals which would not have been appealed to that court if the judge who tried the cause at the circuit had not been one of the general term. Being a man of strong feeling and great pride of opinion, he may divide the court if he cannot carry the majority with him; so that the counsel and parties are not satisfied, feeling that they have had the judgment, in fact, of only one man, the man who first tried their case, and therefore they go up to the court of appeals. Many such cases never would have gone higher than the general term if the judges who examined the case at the general term had had no consultation with the judge who first tried the cause. I am opposed, however, to that particular measure in this plan which provides that the judge who tries the cause may sit in the general term, though he shall not take part in the cases which were tried before him. True, he cannot take part; but if he is a man of strong feeling and strong prejudices, and has made up his mind that he is right; he may urge upon the remaining judges his conclusions, and then the one who appealed has in the court an abler counsel perhaps than himself, occupying a better position. I would prefer that he should be excluded entirely from the general term, as the old circuit judges were; so that when a case is reviewed it may be reviewed by a court who have had nothing to do with the case at the circuit. Then many causes that are appealed

would not be. I am therefore satisfied that, if this objection be got rid of, that seven judges, organized into a permanent court, are enough for the court of appeals, that the difficulty has not been alone in the court of appeals, that they are not to blame for being thus blocked up. Much of the difficulty has been in the present organization of the supreme court.

Mr. E. A. BROWN—I desire to make an explanation in relation to the proposition as to dividing the court. My intention was to express the idea that in a case of emergency, such as exists now—in case the calendar was so large that long delays were necessary—the court might, under some proper arrangement, subdivide their labors, and have, for the time being and in an emergency, two courts instead of one; not by any means that that should be a permanent arrangement to have two courts sitting at the same time or successively, one subdivision succeeding the other.

Mr. FULLER—I feel some embarrassment in voting upon the amendment under consideration. The judiciary system should be organized in a pyramidal form—largest at the base and ascending gradually toward the top. The difficulty with the report under consideration is that we are reversing the process—beginning at the top and undertaking to construct the pyramid downward. It will make a great difference with me what is to underlie this cap-stone, in the vote that I may cast upon the proposition we are now entertaining. It is conceded on all hands that the judiciary system organized by the Constitution of 1846 has been demonstrated by experience to be a failure, and not only a failure, but a very bad failure. It has been proved by experience to be no improvement whatever upon the judiciary system which it superseded. It is not so good as that. We had a better system when we had a supreme court and circuit judges to do the business of the State, with an ultimate appeal to the court of errors. In my judgment, there are two difficulties in the organization of the system under the present Constitution. In the first place, there are defects of the court of appeals; and, in the next place, there is the want of a supreme court at all. We have now no supreme court in this State. We have what we call a supreme court, but it is composed in fact of eight district courts, and their decisions are law only in the districts where they are made. We have no supreme court whose decisions are law throughout the State until they are modified or reversed by a higher tribunal. The decisions of these eight courts, besides introducing a great conflict in the law of the State, do not command that respect which we should have for a supreme court, and the result is that we have appeals from these eight district courts as "thick as leaves in the vale of Vallambrosa," so thick that they entirely overwhelm the court of appeals. And what remedy do the Judiciary Committee, by their report, propose for this evil? They simply propose, in the first place, to reduce the number of judges in the court of appeals to seven, and make three of the judges permanent, instead of shifting and transitory as they are now. In the next place, they merely propose, instead of eight general terms of the district courts, to have four; that is

to say, to double two of these districts together for general term purposes. Now, sir, as I have said, the present judiciary system is a failure. It has proved itself a failure; and I venture to predict that, if it is adopted, the judiciary system proposed by the Judiciary Committee will prove a failure also. I have been at home during the recess of this Convention and have had an opportunity to confer with members of the bar in my part of the State and in different parts of the State; and the general—almost the universal and unanimous opinion seems to be that the report of the Judiciary Committee, if adopted, will prove a failure; that it will be inadequate as a remedy for the evils of which we complain under the present system. There is great force in the remarks of the gentleman from Albany [Mr. A. J. Parker] in relation to the independence of the judges. I think perhaps he is correct upon that subject. That you will gain something by making them more permanent I admit, but you will not gain all that you desire. He says you will gain one-seventh in the capacity—one-seventh in the power to work. In my judgment that will not be sufficient, for two reasons. In the first place he leaves out of account the large increase in the business that is to take place—the increase of litigation throughout the State in consequence of the increase of business and population. This State has largely increased in population since the adoption of the Constitution of 1846. Litigation has largely increased since that time. The business of the State has increased since that time, and it will go on increasing in the future as in the past; and if the court of appeals has come one-seventh short of doing the business of the State in the past it will come more than that in the future if the business goes on increasing as it has done heretofore. In the second place, he leaves out of account that our previous action has thrown a large additional amount of appellate business into this court. We have, by the article we have adopted, provided for the organization of a court of claims and for an appeal from that court to the court of appeals, which alone, in my judgment, will add more than one-seventh to its business. I predict, therefore, that that court, in the future as in the past, if organized as proposed, will be found entirely inadequate to do the business of the State; at any rate after a year or two you will have the same thing enacted over again. The calendar is so formidable now that no man expects to see the end of it, except by the aid of a commission, or some other extraordinary means. In the next place you will have substantially the same district courts, that you have now, and you will have appeals multiplied again as they are now; you will have them multiplied for the very reason that there will be no opportunity for a speedy decision, in the court of appeals. It is well known, that a large proportion of the appeals brought now, are brought only for delay; and so long as you have a court of appeals lumbered up as now, that will be the case. A man who has a judgment against him, of two thousand dollars in the supreme court, can make more out of the money by investing it in active business, during the time it will take to reach a decision in the appellate court, than it will take to

carry the case to the court of appeals, and pay the cost of the litigation. You must have some different organization of the base of your judicial fabric. You must have some means of securing greater confidence in the decision of these lower courts; some means of discouraging and repressing appeals; some means of lessening the number of them, or it will be impossible to construct any court of appeals in such manner that it will be enabled to keep its calendar clear, and properly do the judicial business of the State. Now what do we want for this purpose? What is the only practicable remedy that can be devised? It is a supreme court—a supreme court inserted between the district court and the court of appeals to arrest a large proportion of the litigation on its way up. That, sir, is what we want, and until we have something of that kind, we shall have the same thing over and over again, which we have had for the last twenty years. The remedy proposed I fear will be quite as bad, if it is no worse than the disease. As I said, the litigation of the State has increased largely within the last twenty years, and as it will increase in the twenty years to come, it will be necessary to have one or two of these courts inserted between the district courts and the court of appeals. Or you may have three of them; what you want is a court entirely unmixed with the causes which shall come before it, and whose decisions shall command the respect, not only of the parties but of the bar, and furnish a rule of more uniform decision throughout the State. Until you have something of that kind, your remedy, I fear, will be no better than the disease. Sir, as I said before, the judicial system of the present Constitution is a failure, and the judicial system reported by the committee for adoption by this Convention I predict will prove a failure also. It will be an inadequate remedy for the evils of which we complain, and some better system must be devised. Now, in relation to the proposition more immediately before the committee. If we could have some such remedy as I have suggested, then I think seven judges would be amply sufficient for the court of appeals. If we had a court whose decisions would command the respect of a bar and the people, between the district courts and the court of appeals, I think seven judges could be entirely adequate to decide all the appeals that would come before them, and decide them too in a proper manner. But unless we have something of that kind they will be entirely inadequate. In my opinion, nine judges would be inadequate; and a much larger number would be inadequate. I am not certain that you increase the power of the court by increasing the number of judges. I think myself that a court composed of seven judges elected for fourteen years would be better than a court of nine judges elected for a period of nine years. The difficulty is, if you have nine judges, in adjusting their election and classification to a longer period, you must either have one go out every year during the period of nine years or have one go out every two years for a period of eighteen years, or you must have three go out every four years for twelve years. I think the period of fourteen years, as suggested by the gentleman from Albany [Mr. A. J. Parker], is better than either.

As I said, the difficulty in adopting the proposition under consideration, is to know what is to underlie the cap-stone of the pyramid, and to know how the base is to be constructed. But in the hope and in the belief that we shall have some proper base underneath, I think, it will be better for the present to adhere to the report of the committee on this subject and limit the number of judges to seven.

Mr. HARRIS—I am satisfied to take the second section as reported by the minority of the committee, both as to time and tenure of office, and the number of judges. It is my belief and judgment, formed from some experience and observation, that five judges are enough to constitute a court, and that any number beyond that tends to retard business rather than to secure soundness of judgment. And with that conviction, sir, I should be sorry to see the court composed of a greater number than seven, thus leaving two for contingencies. I believe that seven judges are enough for the court of appeals, and that any greater number would be an incubrance rather than an advantage. It would tend to increase the expenses of the judiciary without any corresponding benefit. I hope, therefore, the number will be limited to seven. I think that is enough. And in respect to the tenure of office, I prefer the term of fourteen years to that provided in the report of the majority of the committee. If the judges were to be appointed by the Executive, I should prefer the majority tenure; but there seems to me to be an incongruity in making the judges elective, and at the same time making their term of office expire upon their arrival at a certain age. The public may not know when judges are to be elected, or how many there may be to elect at any one election. I very much prefer, therefore, if we are to elect judges, that their term of office be a certain number of years. I agree with my colleague [Mr. A. J. Parker] in the reasons he has given for increasing the length of the term. I think fourteen years is not too long. I believe that is the best proposition we can adopt. I think a court of appeals composed of seven permanent judges, elected for a period of fourteen years, will be entirely adequate to do all the business that will come before that court. I am satisfied that seven judges, laboring in that court as judges do labor and should, can keep up with the business that will come to them. If they can start unencumbered by an old calendar, I have no doubt that such a court will prove itself entirely equal to its duties.

Mr. C. L. ALLEN—I am in favor of a permanent court. Experience, as well as the desire for uniform decisions in appeals to the court of last resort, has shown the necessity of permanency. I am in favor, too, of the number seven. As has been well remarked by those who have preceded me, it is a sufficient number to dispose of the business that shall come before that court. This is my opinion, having had some little experience on this subject, as well as some of those who have addressed the Convention already. I will mention one particular in which I think it will be perfectly evident that a large share of the time occupied by that court will be saved by

making members of it permanent members. Why, during the first term or two of court a large portion of the time is taken up ordinarily in the re-argument of cases where the court have been unable to agree upon a decision, and that is in consequence of four members of that court going out every year, when they have been unable to agree during the latter part of the year. Consequently great delays have occurred. Great delays have occurred both in the decision of cases and in the arguments and re-arguments which have been necessary; when, if the same court could have been in existence a term or two longer, they could have agreed upon a decision, and the delay and expense and re-argument would have been avoided. Under the proposed amendment this delay and expense will thus be saved, and the decisions of the court will be greatly advanced, and thus a permanent court of seven judges, in my opinion, will be a sufficient number to dispose of the business. Then, as to the term, I am in favor of fourteen years, for one or two reasons in addition to those which have been advanced by those who have preceded me. Experience is something; experience is of some value. In the decision of causes, where the member has been in his seat, six, eight, or ten years, he brings to his aid, and to the aid of the court, the experience he has had during the preceding years. Consequently, the longer term he holds, the better he is able to examine the questions committed to his charge and to come to a correct judgment. It is for these two reasons, without trespassing upon the time of the committee, that I am in favor of a number seven and a term of fourteen years.

Mr. BAKER—It seems to me that the propriety of decreasing the court to the number of seven, as proposed by the Judiciary Committee, will appear from the remarks made by the gentleman from Albany [Mr. A. J. Parker], in reply to the gentleman from Lewis [Mr. E. A. Brown]. My motive in increasing the number to nine was to create a court, the numerical force of which would be sufficient to take the present calendar and dispose of the hearing and decision of those cases, and be able to keep up in future time with the increasing business of this State, and have but one court. I entirely agree with the gentleman from Albany, that it is one of the great evils the State is now laboring under, of having conflicting decisions of courts of co-ordinate jurisdiction. Now, by the report of the majority of the committee, it is proposed by the organization of the court of appeals to vest all causes pending in a court of appeals, re-organized under this Constitution. But the same section provides that all cases pending on a certain future day, the first of January, 1868, shall be heard and decided by a commission. My objection to that plan is sustained by the argument of the gentleman from Albany, in his objections to the creation of two courts, and having the same court divided into two parts, having co-ordinate and equal jurisdiction. All cases that are to be heard by this commission, if I understand the language of this section, can be heard by the court of appeals. Those cases, I believe, constitute about one thousand, and involve every

variety of question that probably will arise in this State in the next twenty years. They must come up before this commission and be decided by the commission. At the same time, questions of the same character have to come before a court of appeals re-organized under this Constitution. Hence you will have two courts in operation at the same time, of equal and ultimate jurisdiction, acting independently of each other, and almost necessarily promulgating different law upon the same identical question. This was the reason why I proposed to increase the number of judges from seven to nine, so that the numerical force of the court would be sufficient to take the present calendar and dispose of it, and be sufficient and able to meet the increasing business of the State. That was the theory upon which I proposed the amendment. I feel a great deference for the opinions of gentlemen who have had experience in all of our courts, and, as I remarked last night, I only offered this amendment to draw out the opinion of the committee, and not to insist upon any amendment I have made or any theory which I may have in my mind. I confess my ignorance as compared with other gentlemen in this Convention, who have had so much more experience, and I feel bound to concur very much in their opinion. I concur with the gentleman from Albany [Mr. A. J. Parker] in the propriety of constituting a court of appeals that is stable and permanent. If that is done, and the judges of that court shall be made ineligible to re-election, then I should be in favor of increasing the duration of the term of office instead of diminishing it. I proposed a diminution of the term of office because I supposed it would be the sense of this Convention to have more frequent elections. If the judges of the court of appeals shall be ineligible to a re-election, then I should be in favor of increasing the term to fourteen years, if not a longer period. But in proposing that the court of appeals should consist of nine judges, which I suppose would be able to dispose of the present calendar and dispose of the increasing business that might accrue, I had reference to the re-organization of the supreme court. In the re-organization of the supreme court we are to seek and secure, in my judgment, the real relief that the people of this State require. The division of the court into eight independent courts has led to the increase of business, in my judgment, more than any other one circumstance. As is well known by every lawyer, you may take up almost any one of Barbour's reports and you will find the same identical question decided differently and oppositely, rendering the law entirely uncertain. In the present situation of our courts it is impossible to have the Legislature to correct these evils. If the supreme court in the second district decides a question, and the supreme court in the fourth district decides it directly in conflict with the decision of the second district, the only remedy to ascertain what the law of the State is on that question is by bringing an appeal to the court of appeals. Usually the aggrieved party in each case carries his case to the court of appeals. So that, as the practice now is, it becomes necessary sometimes to have two, and frequently more than two, cases involving the same identical question.

from the supreme court to the court of appeals, in order to ascertain what the law is. So that in constructing the court of appeals my theory would be based upon the construction of the supreme court in such a way as to constitute unity in that court, so that it could promulgate no law unless it promulgated the law in consonance with its own opinions. That was my object in proposing this amendment. I am not tenacious as to the adoption of this amendment. I proposed it for the purpose of drawing out opinions from men of more experience than myself on these questions. I shall be entirely content with the conclusions which the committee shall arrive at after full deliberation.

Mr. GRAVES—I am opposed both to the majority and the minority reports. I see no good reason why we should change the form of the court of appeals. The officers who compose that court, under the present Constitution of 1846, are clearly as able and are as good lawyers as were found in the court for the correction of errors prior to the Constitution of 1846. The men who compose that court are selected from the great body of lawyers who have become familiar with the ability, capacity, integrity and industry of the gentlemen composing the present court of appeals. Sir, is it expected that by this change a better class of men will be selected? Is it expected the business will be disposed of more readily than it is now disposed of? Or is it true that, because a part of the court are taken from the *nisi prius* courts, or from the circuits, to constitute a part of the appellate tribunal, that they are less qualified, less industrious, less intelligent, than the body of men constituting or contemplated to constitute the court, under the present reports of the minority and majority committees? Will any lawyer say, in his place, that any abuse has arisen in the discharge of the duty of the members of the court of appeals? Will any lawyer here say that there has been any want of intelligence, any want of capacity, to discharge the responsible duties devolved upon them; that there has been any dereliction of duty? If there has been no want of capacity, why seek to change that which is recognized at this day to be an able and industrious tribunal? It is said by some gentlemen who addressed the committee that greater dispatch will be had in the discharge of business by electing the court of appeals entirely from a different body of men, from a class of men who are in no way connected with the circuit courts. Now, sir, the gentlemen composing our circuit court judges are our best and ablest lawyers, ready minded, intelligent, quick of perception, having all that the position of judge demands. When one goes into the court of appeals, under our present system, he goes with his active, ready, perceptive talent, which enables him to grasp and analyze and compare, adjust and determine with great readiness, with more readiness, I think, than if he had been sitting as a member of the court of appeals for some eight or nine years, free from the excitement which arises in the circuit courts. Now, until some gentleman in this Convention, occupying the position of practicing lawyer, shall satisfy me that abuses have arisen under our present court of appeals, that we can get an abler

and more intelligent class of men, I am certainly in favor of retaining the old mode of electing a court of appeals. All changes are not reforms; and why seek to change this provision in the Constitution unless there is a manifest evil that should be corrected? Until that manifest evil appears, I appeal to gentlemen upon this floor if it is not clear to every mind in this Convention that it is his duty not only to allow the old Constitution to remain as it is, and not ingraft upon it new and untried provisions which may not result as well, but to continue that body of men, in whom, from experience, we have the utmost confidence in the discharge of these high and responsible duties.

Mr. WAKEMAN—I am surprised that the gentleman from Herkimer [Mr. Graves] has not discovered the difficulty in the present court of appeals. I have conversed with a number of the judges of the supreme court and those who have been members of that court, and in no instance has one of them spoken on the subject who has not condemned *in toto* the organization of that court. The reason of it is obvious. In the first place, every year that court is re-enforced by four judges from the supreme court, and for a single year. Then, again, you bring into the court of appeals four judges from the supreme court who are to go into that court and review their own decisions, and there sit in judgment on the opinions they have themselves delivered in the supreme court. After the general term has maturely considered, of course they can see no other way than to stand by their own decisions. That is the difficulty all the way through. I agree with the gentleman from Herkimer [Mr. Graves] in this: that as able men go into the court of appeals from the supreme court bench as any other set of judges. But sometimes the more ability they have the worse it is for the court as at present constituted, because they can do more harm; they can block the wheels of the court. Now, suppose we have a court so organized as not to sit in review of the decisions of its members. In a short time that court understands perfectly well where a question is raised, that it has been already decided in a particular case and it will take but a short time to dispose of it. I have been told by the judges that if the court had been a permanent court, a court separate and apart from re-enforcement from the supreme court, the probability is business could have been got along with, and we should not have been in our present position. A supreme court judge once described the members of the supreme court as the militia, and described graphically once where the militia defeated the regulars where they had a contest over a case from the supreme court. Militia are good in their place no doubt. They do good service. But let us have regulars to review the decisions of the other courts, and we shall dispose of this question, I think, in such a way as we shall have no trouble hereafter.

Mr. RATHBUN—Mr. Chairman, I really feel very little interest in this question immediately under consideration. But I do feel a good deal of interest in the perfection of our entire plan for the re-establishment and re-organization of our

courts; and without taking up much time in discussing this question in regard to the number of judges, upon that point I have to say simply this: that in my judgment the number seven is too large. I am satisfied we can get more labor, the accomplishment of a larger amount of business of any kind that requires the union and concurrence of a number of persons upon a given point, out of five than you can out of a larger number. I do not care how much authority you impose; the more you add above that number the more you obstruct their labor. If you have five judges you will have but five speeches; if you have six judges you will have six speeches; and just in proportion as you increase the number, you multiply or increase the difficulties, and increase the labors of those who are to determine. I am sustained in that view by several of the members of the present court of appeals. I had a conversation with them during the summer session, and I found that all of them agree that the number five was as high as was profitable for expedition and accuracy in the performance of that kind of business. Some of the best judges upon the bench seem to be perfectly satisfied that that number will relieve them from the pressure under which they now labor; and, without any manner of doubt, enable them to take up the business that may come before them, and keep the calendar clear at every term. Two of them went further than that; they assured me that with the calendar as it stood at that day five permanent judges working in harmony would take it, and with the accruing business clear the whole of it within two years. That was their idea, and I have no doubt at all, in my own judgment, that they were correct. I know very well, and there are few lawyers in this house who have had business in that court who do not know, that a large portion, from one-half to three-fourths, of the business upon that calendar is there for delay. Five permanent judges could dispose of all the business upon that calendar in a very short time. A large portion of the cases will be decided upon the argument. There is no doubt, in my mind, of the ability of five judges to dispose of the business as fast as it comes before them. I am not prepared to offer, nor do I offer, any amendment upon this subject. But in my judgment, instead of going higher than the number seven, the true way would be to go lower. Now, in regard to the tenure of office, I am not particular whether a judge takes his hat off to me when I go into court or not, nor am I particular whether he blandly smiles upon me or not. I want him to act like a judge, and work like a judge, and decide like a judge. That is all the good manner I ask of him. I want him to feel that he is under no obligation to me nor to any other member of the bar who comes before him. I want him to feel that his place is fixed for a definite term, sufficiently long to render him independent; that he may not feel dependent upon the good will of any body, nor bound to bow and scrape to any body in order to gain a re-election. That is what I call independence. I want every man who goes upon the bench to go there feeling that he is a judge, that he is alone responsible to his God, his conscience and the people for the faithful and honest discharge of his duties.

Mr. GRAVES—Will the gentleman allow me a question?

Mr. RATHBUN—Yes; but be quick, because my time is short. [Laughter.]

Mr. GRAVES—I desire to ask, if it would be acceptable to the gentleman to constitute the court of appeals of the number five, making three a quorum—the court always to be open?

Mr. RATHBUN—Well, sir, I am not particular about details. The Legislature are wise enough to regulate that matter. I do not think it would be quite right toward the judges to keep the court always open, when it might not have business half the time. It should be always open and ready to hear argument whenever there is business to be done. Now, in regard to the term of office. There is a kind of prejudice, although I do not entertain it, in regard to putting men into office during good behavior, or until they arrive at a certain age in life. But there is a prejudice; I find it here, and I have no doubt it will be found everywhere. Wherever we go and talk upon the subject, we hear the remark greet our ears, "It will be very improper to put men in office for life." The proposition is, continue judges in office until they arrive at seventy years. Well, if you take any other office than a judicial office, I should be opposed to any long tenure. The judiciary should be as independent in a republican government as in any other government on the face of the earth, because, in order to be just and faithful and honest, they must be independent. Now, I object to another proposition that is contained in the minority report: that is, that the judges should be elected for twelve or fourteen years. I am not particular about the time, although I prefer the term of fourteen years to a shorter term. But the moment they are elected, they are to be classified, and instead of being elected fourteen years, we are to begin, two years hence, to elect one, and then another, and another every two years—rotation in office. I should like to know if any gentleman can tell me what he wants that for. Why not, when you have elected the judges for fourteen years, let them alone, and not have one of them, whom you have elected for the first term, begin to electioneer for a re-nomination at the end of two years. I want to see that ended, and ended for good when this Constitution is adopted. Men are liable to die, and I believe judges die as well as other people. They sometimes resign. I recollect a number of judges of the court of appeals who have resigned; others have refused a re-election. That fashion has changed from what it was in the days of Jefferson. Then, he said, they neither died, resigned, nor ran away. But some resign now, and some die. There will be abundance of room for sending in new men, probably, by the accidents which happen to human beings as they pass along through life. Some will disappear, and others are to take their places. And then comes the question which I merely hint at now. Then I would like to see those places filled by appointment of the Governor and Senate. That is what I would like. I should hardly be willing to trust the Governor and Senate to appoint the whole judiciary of the State at the start under a new Consti-

tution. It is a little too much to trust to any one man. But when the time comes to fill vacancies, occasioned by accidents, resignations, deaths or other causes, then I would like to see it in the power of the Governor to fill the vacancies, by and with the advice and consent of the Senate. But I am not particular about that. I wish, however, to impress upon the committee the importance of having the members of the court go in for the same term. They, as I understand it, are not to be re-elected. When their time expires, that is an end of it. And their terms will not expire together. It would be marvelous that five or seven men can go upon the bench in the court of appeals and be there fourteen years, without a death or vacancy occurring among them. It has never occurred in this country, even if it has in any other. I have some views that are peculiar, perhaps, in regard to the supreme court and the judges of the supreme court. We have been running now twenty years with eight general terms of the supreme court in the State. The law originating from the decisions of these eight benches has been remarkably contradictory on some points, and remarkably concurrent upon some other points. The result of their labor has given us a number of volumes in twenty years, which it would require a pretty good horse and strong cart to draw. [Laughter.] The committee have by their report made a great advance; but in my judgment there is one step further to be taken in the same direction, and that is to make two general terms in this State instead of three, one will be New York and a sufficient amount of territory to secure a full share of the business; and the other like our old supreme court to be composed of the central and western portion of the State. That would suit me. I remember very well when the business of this State was done by a single court, consisting of three judges, up to 1846 or 1847. And I recollect going before that court in New York city, at Albany, at Utica, at Rochester, and arguing cases, and meeting the bar there from all parts of the State. I recollect very well that these three judges who occupied the bench of that court disposed of a large amount of business upon the argument. Some of the ablest counsel in the State were employed and were there for the purpose of making long and able arguments on their cases. I have known many of those cases decided upon the opening of the counsel's argument, and no opinion written in the case by the court. Yet that was the end of it. There were few appeals to the court of errors. That supreme court, as constituted, was free from suspicion, and had so much the confidence of the bar and the people that the old court of errors, which was a little else than a town-meeting, was able to go along and do all the business brought before it. Now, if you would come back and establish two general terms upon the same principle, electing the judges as general term judges, and keep them out of the circuits, keep them away from contact with the bar, or else have them appointed by the Governor, I have no doubt at all, in my own mind, that it would reduce the number of appeals from that court to the court of appeals at least by one-half. We would all have more confidence in the court, and all be better satis-

fied with its decisions. We should feel that there was little use of passing beyond that court in trying experiments; we would be timid compared with what we are now. Now we go down to a circuit and try a case. We become dissatisfied with its termination, and we give the judge who tried it to understand that we believe he has committed an error. We bring an appeal: go to the general term, and there is the same judge on the bench before us. If he has taken offense at something said on the trial, his mind is fixed before the argument; he has decided the case. This is all wrong; the whole principle is wrong. It is a blunder that judges who are to try a case should be permitted anywhere afterward upon the bench to review their own decisions. I know there are a great many judges who are as free to review and correct cases of law and fact in their own decisions as any body else is to do it for them. I know a great many such judges. But now and then you find a man who thinks this a personal matter for you to undertake to demonstrate that he has made a mistake. You offend his dignity; you are doing just what you ought not to do; and he is bound to defend himself. It is a mistake, but it does not benefit the party that it is a mistake, and this forces a review of the decision. These judges I would have elected for the same term as the judges of the court of appeals—for a long term. That is my doctrine; because with a long term is independence; and if the people are not careful to select good, sound, honest men for their judges, it is their fault. They hold the power, and they ought to know enough about men to make no mistake. They do mistake sometimes, but are not as likely to do so when judges are elected for a long term. Now, as to the residue of the report. My views are in accordance with the report of the committee in the main. These general terms, in my judgment, should consist of four judges each, so that there might always be of that body three to hold a court. I think the people are convinced that three judges would be competent to perform all their duties in each of their judicial districts. That is my view. That would save something, and leave the force, in my judgment, quite as efficient as it would be with the number recommended. But as to that I am not particular. I merely throw out the suggestion, because if we can act efficiently, and at the same time couple it with economy, expedition and accuracy, the idea is worth looking into; it is worthy of consideration. I merely throw it out for the consideration of those who are to pass upon and dispose of it as they choose. Now, as against any amendment offered, I am in favor of the original proposition of the committee. It is with great diffidence I even suggest that my views do not concur entirely with others. I propose to stand by that committee, so that in the main their report shall be sustained, unless this Convention see fit to retrench a little in numbers with a view to economy and the expedition and safety in the public business.

Mr. A. J. PARKER—I wish merely to say that it seems to me premature, in this stage of our labor, to discuss the organization of the supreme court. We have not yet reached that point. For one, I shall differ very widely from

the report of the committee in regard to the organization of that court. I agree as to the evils that have been stated by many members of this committee; but I think it better to leave it until we shall have disposed of the question of the organization of the court of appeals. If this substitute shall be adopted (and I think it seems to be the disposition of the committee), I shall propose an amendment providing that a judge who shall be elected, or shall hold for the term of fourteen years, shall be ineligible thereafter to a second term, with a further provision that the clerk may be appointed by the court, as well as the reporter and other attendants; because I can see no connection between these offices and the party results of any election. In that respect, I certainly prefer the majority report, which provides that the court may appoint and remove its own clerk as well as its reporter. If, therefore, the substitute shall be adopted, I shall propose those two amendments.

Mr. CONGER—As I called for a division of the proposition submitted by the gentleman from Montgomery [Mr. Baker], which brings up the question, whether the number of the judges of the court of appeals shall be seven or nine (although that question is more or less connected with the other topics which have engaged the attention of the committee for the last hour), it would hardly be pertinent for me to make any observation except on that part of the question the committee is called upon to consider in the first instance, that is, whether the number of judges shall be seven or nine. I do not wish to test this question by considerations merely of economy or financial prudence. If we are to have a court of appeals worthy of the name and worthy of the State, we should see to it that we make some provision, as far as we can, that their compensation shall be adequate to their office and secure from ordinary impediments. If you say you will increase the number of judges, you must say to the people that you expect they will make suitable provision for these offices; or, if you propose to diminish the compensation, it is immaterial whether we have seven or nine judges. Now, I admit that this is seemingly a lowering of the question to bring it down to a matter of compensation, and I feel that I ought to apologize, not only to the committee, but to myself, for being so venturesome, in bringing that consideration before the committee at this time; and yet I am aware that such consideration will weigh with many minds when we come to the final vote on the rejection or acceptance of this plan. It will be proper for me, however, to suggest to the committee that, in the constitution of the Supreme Court of the United States, nine was considered a sufficient number of judges to meet all the complicated questions that would arise in that court, not only in the civil suits between citizens of the different States, but also all the questions connected with the interpretation of the Constitution of the United States, and with the treaties made by our government with foreign powers; and I am apprised by one more familiar with the fact than I was myself, that this present Congress has refused to appoint to a vacancy that has recently occurred in that court, so that the present judicial

force is reduced to eight, and also that by law it is to be hereafter reduced to six. Without stopping to inquire whether such an act is judicious in the national Congress or not, I think the fact in regard to the organization of the Supreme Court of the United States, to which I have called attention, is of considerable importance in aiding us to form a correct judgment of the numerical force required, and I think that we may reasonably come to the conclusion that the court of appeals in our own State would be sufficiently filled by seven judges instead of the number that has been proposed. I hope that gentlemen, when they limit the consideration of the question in the division called for, will find that it is not necessary to complicate that question of number with the other considerations which have been brought forward. We can constitute the court and lay it upon just foundations afterward; but the present question is simply as to the number of judges.

The question was put on the first division of the amendment of Mr. Baker, to substitute "nine" for "seven," in the second line of the second section, and it was declared lost.

The question then recurred on the second division of the amendment of Mr. Baker, to substitute "nine" for "fourteen," in the fourth line of the same section.

Mr. HALE—I regard the vote which is about to be taken in this Convention as one of a great deal of importance, as determining in some measure the policy which we are to pursue in regard to the new judicial system. I believe, as has been said on this floor by many gentlemen, that this subject of the re-organization of the courts is a question of greater practical importance than any other that will come before this Convention. I believe that the evils and defects in our present judicial system were the occasion of the calling of this Convention; that is, I believe, that if the people of the State had been satisfied with the judicial system that has existed in this State for the last twenty years this Convention would not have been called. But, Mr. Chairman, I do not altogether agree with my friend from Albany [Mr. A. J. Parker], that it is practicable for us to discuss the question now under consideration without also looking, to some extent, at the whole system—the system as it exists under the system proposed by the majority of the Judiciary Committee, upon which we are to act here. And, sir, it cannot be amiss to glance for a moment at the history of the judicial systems of this State. We were addressed last evening by a gentleman who argued in favor of the present system. He argued in favor of it as a conservative measure. He said it was a system which had been tried for twenty years, and which, therefore, we were not to abandon. Now, I wish to remind this committee that from the adoption of the first Constitution of this State up to the year 1846, a period of about seventy years, the judicial system of this State was entirely different from that under which we have lived for the last twenty years, and I would ask the gentleman of this committee, and especially the many distinguished members of the legal profession here, some of whom have had experience under the system preceding the present, and

all of whom are more or less acquainted with the practical results of these different systems, whether there is any thing in the judiciary of this State as it exists now—when we compare it with the first judicial system that we had, or with the second judicial system that existed here—of which we have any reason to be proud? I would ask these gentlemen whether the judicial decisions of our courts since that radical and sweeping change was made by the Convention of 1846, have commanded any greater respect than did the decisions of that court which contained such men as James Kent, and Ambrose Spencer, or than that second court, which contained such men as Savage and Sutherland and Cowen and Bronson? It seems to me that it is patent to every one who examines the question, to every one who glances at the reports in our State, or looks at the history of our judicial system and compares the respect that is now paid to the decisions of these old courts with the respect paid to the decisions of the courts now existing, that the experiment we have been trying for the last twenty years has been any thing but a success. Mr. Chairman, it has been a failure in every respect. It fails to accomplish the work which it is assigned to accomplish. It fails to secure the respect which the judiciary of the State of New York ought to command. What are the reasons of the failure? They are not that men do not exist now of equal capacity with those who sat upon the bench in former days. We have judges upon the bench who are, in learning, in natural ability, in every respect, the equals, perhaps, even of those distinguished men who were judges then. The fault is in the system. The system is radically and wholly wrong; and this Convention will utterly fail to meet the demands of the people of this State unless a revolution is effected by it, even more sweeping than that which is reported by the committee of which I have the honor to be a member. I say, sir, that the people demand a change. I know that this is a statement which it is easy to make, and which has been made in regard to different subjects; but I ask gentlemen, if it is not true, and if there is not a general discontent throughout the State in regard to the present condition of our judicial system?

Mr. GRAVES—I would like to ask the gentleman a question. Does that discontent and complaint arise out of the want of capacity in the judges, or out of the manner in which business is done?

Mr. HALE—I will answer the gentleman cheerfully. Neither out of the want of capacity in the judges, nor out of the manner in which they do the business, but out of this disastrous system which was fastened upon the State by the Convention of 1846, and adopted by the people at the election which followed the session of that Convention. Consider for a moment the present constitution of the court of appeals. I was certainly surprised when the gentleman from Herkimer [Mr. Graves] advocated the present system and stated that it was a system with which no fault could be found. I did not suppose that there was a practicing lawyer or a judge in this State, who was not satisfied that that system was utterly wrong, and that the

court of appeals was so constituted, that no matter if each member of it were a Solon, or a Mansfield, or a Kent, it would be utterly impossible, in the nature of things, for it to accomplish its business. And why? As I said before, not because the judges were not capable, but because of this constant change, making this court a revolving court, and making the judges, no matter how eminent and able they may be, comparable to nothing but the "little joker" with which the "thimble rigger" is in the habit of amusing the youth congregated to observe his dexterous performances, "Now you see him; now you don't see him." To-day he is a judge; to-morrow he is not a judge; and a new man is in his place. There is no system about it—no permanence about it, and the object which the Judiciary Committee had in view in presenting this amendment was to secure some greater degree of permanency on the bench of the court of appeals. I do not care how wise the judges are, or how great their experience is, if in a court of eight members, so arranged that every year one-half, and every second year five-eighths of the court must be changed, it is utterly impossible for them to accomplish the business of the State. I believe, Mr. Chairman, and I am willing to state my belief frankly, although it may be an unpopular opinion in this Convention, that the great error which lay at the bottom of the judicial system adopted in 1846, was in making judges elective. I believe there is no democracy in it. I believe there is no principle in it that is worthy of commendation.

Mr. NELSON—Will the gentleman permit me to put a question? He has been in practice for many years, and I want to ask him whether the appointments to the office of justice of the supreme court made by the Executive, could in any respect compare with those made by the people in their elections? I refer now to the supreme court, and I ask the gentleman to take as an instance the second district, where he and I have practiced.

Mr. HALE—In answer to the gentleman I should say that on an average there was not very much to choose between them. [Laughter.] But I admit that appointments may have been made by Governors which were injudicious and inferior to many of those elected.

Mr. NELSON—If you put the judges there for life, how are you going to get rid of them?

Mr. HALE—I will answer the gentleman and explain fully. Under our present system, if an appointment is made by the Governor, he knows that the man is going to hold office only until the next election, and that he cannot do much harm until then, even if not well qualified for the office, so he is often not as careful in selection as he might be. And if improper appointments have been made, as may possibly be the case, I have no doubt that it has generally been owing to pressure brought to bear upon the Governor who has been induced to make such appointments, with the knowledge that his appointees could hold office only until the next general election. But if the same Governor had had imposed upon him the responsibility of appointing a judge to hold office for life or during good behavior, he

would most likely have exercised much more judgment and care in making the selection. But the evil of this system is not altogether in the fact that we do not get competent judges. I do not charge that. The majority of the gentlemen on the bench with whom I have the honor to be acquainted, are gentlemen for whose ability, learning and integrity, I have the very greatest respect; but the whole elective system, especially when accompanied with short terms, does inevitably tend to demoralize the bench, and if there was only one instance, or only occasional instances, when unfit men were put upon the bench by election, still this would not justify the elective system. It has been well remarked by some gentleman who has spoken here that where you have judges elected for short terms (and the evil is much greater in the judicial districts of the supreme court than in the court of appeals, for the reason that influence is exerted much easier in a limited sphere, than throughout the whole State), where you have a judge upon the bench, with a consciousness that his continuance there will depend upon pleasing the populace, or pleasing the influential politicians, you take away from him one of the greatest incentives that he has to absolute purity and impartiality. You lead his mind from the consideration in all cases of what is right and just, and what his decision ought to be, to the consideration of the question, "how will this decision affect my chances for re-election?" Men are human; and a man who is taken from a lucrative professional position and put upon the bench, for the period of eight years, knows that at the expiration of that term, his clients will have been scattered, and will have become the clients of others, and that it is uncertain whether, if he undertakes to resume practice, again he will succeed. From being on the bench and not participating in the argument, or trial of causes, his habits will have become changed, and he cannot resume practice with the same facility and success with which he could have carried it on before. We often see men of eminent ability, who have been eminent as counsel before being put upon the bench, and who have been eminent as judges, who are so embarrassed by the judicial habits thereby acquired that it takes years for them to regain the facility of practice at the bar which they formerly had, if, indeed, they ever regain it. It was suggested by the distinguished gentleman from Albany [Mr. Harris], that the system proposed by the majority of the committee, in regard to life tenure, was in some measure incongruous and inconsistent with the elective system. The suggestion is one that has before struck me with very great force; and when this question came up before the Judiciary Committee, I was at first decidedly of the opinion that there was an incongruity and inconsistency between the idea of an elective system and a life tenure; and I admit now that it would be much more consistent if we should provide, as was suggested by the gentleman from Cayuga [Mr. Rathbun], who addressed the committee last, that the life tenure should be retained; the first bench of judges to be elected by a popular vote, but that vacancies, as they occur, be filled by appointment. If it were so, we should return not

directly, not by throwing such an immense responsibility upon a single Governor as would be involved in making the appointments to fill the whole bench, but gradually and easily, to what I believe to be the true principle, and what I believe the people of the State consider the true principle, which is that judges should be appointed by the Governor, or by some other proper authority, rather than elected by the people.

Mr. SMITH—As the gentleman has already given his opinion in regard to the respective merits of the plan of appointing and the plan of electing judges, I would like to know whether he thinks that a man who is appointed by the central power, perhaps at the dictation of a clique of political wire-pullers, would be less likely to be influenced by partisan motives than a man elected by the people?

Mr. HALE—I do not think there would be any difference in that respect. The life tenure provision would correct the evil which the gentleman indicates, whether judges were elected or appointed. My objection to the election of judges for a life tenure, as a general rule, would be the very obvious one that, in case of an election by the people of the State or of the judicial district, the people generally could have but very little knowledge of the capacity and fitness of the candidates; and that a single man, upon whom the responsibility of making good appointments rested, would be much more likely to have the requisite knowledge and to judge correctly than would the people, who would simply indorse a nomination made by a political convention. But, Mr. Chairman, in any event, it seems to me that a tenure which would be independent would be more satisfactory, more likely to give us an independent judiciary—a judiciary who would decide irrespective of personal motives and irrespective of all desire and expectation of keeping their seats on the bench beyond the allotted term. For this reason I am in favor of retaining the provision as to tenure as it is presented in the majority report.

Mr. POND—Would not a provision rendering the incumbent ineligible to a second election obviate the difficulty which the gentleman points out?

Mr. HALE—Yes; and I am not very strenuous myself as to whether we adopt a life tenure, or a term of fourteen years. There is, however, an objection to the plan suggested now by the gentleman from Saratoga [Mr. Pond], and it is this: that we have men now upon the bench of the court of appeals who are between the ages of forty and fifty years; and in the case of such men this plan would deprive the State of their judicial services at just that period of life when they were best qualified to render them. That, I think, is a very serious objection. I admit that in the case of most judges a fourteen year term of office would be equivalent or perhaps more than equivalent to the life tenure proposed by the Judiciary Committee, because it is likely that a great majority of the judges would be sixty years old or thereabouts when chosen to that position, in which case, of course, the tenure proposed by the majority of the committee would really be shorter than that suggested by Mr. Goodrich in his minority report.

But it does sometimes happen that men are placed upon the bench comparatively young, and in that case this plan would deprive the State of their services at the time when it could least afford to spare them. Take the case familiar to us all of Chancellor Kent. All will recollect that under the old system the State was deprived of his judicial services at the time when he was in his prime as a judge, sixty years of age; and nobody doubts that if our system had permitted of an extension of his term of office for ten years longer, it would have been greatly to the advantage of the judiciary and of the State at large. I wish to say a word now in reference to the suggestion made by the gentleman from Monroe [Mr. Fuller], in regard to the capacity of this bench to perform the work assigned to them. I agree with him that the business of the court of appeals may be materially lessened by a proper organization of the supreme court. If a greater degree of unity be given to that court than it now possesses, and if it be so organized that it will command the confidence of the people to a greater extent than it does now, the proportion of appeals to the court of appeals will be very greatly diminished. I presume the gentleman has found what I and almost every lawyer of my acquaintance have found, that in advising a client as to the wisdom of appealing from the decision of a judge at special term or circuit, he almost invariably advises him not to appeal unless he is prepared to go to the court of appeals for the reason that on the bench of the general term he is likely to find the very judge from whose decision he appeals, who is there with his opinions and convictions in regard to the case already formed, and with a power of influencing the other members of the court which the client can have very little hope of being able to overcome. Upon this subject I may perhaps state without impropriety that I am of opinion that the report of the majority of the committee might be modified. Although I believe that the organization proposed by the majority of the committee is an improvement upon the present system, still I think that other modifications could be made which would secure a great degree of unity and respectability in the appellate branch of the supreme court; and at the proper time, if no one else does, I shall propose such a modification as, in my humble judgment, will render the court more efficient and will materially lessen the number of appeals. I hope the amendment as to term of office, offered by the gentleman from Montgomery [Mr. Baker], will not prevail. I cannot see how, under the action which the committee has taken, the term of nine years—

Mr. BAKER—If the gentleman will permit, I will state that I intended to withdraw the remainder of the amendment, because, of course, the action of the committee renders it inconsistent and improper to insist upon it. I now withdraw it.

The question recurred on the amendment of Mr. Smith, to substitute the second and third sections of the minority report.

Mr. SMITH—When I moved that substitute my only object was to discuss the question as between life tenure and a term of years. I had not

observed that there were any other differences between the two reports. There has been one other difference pointed out by the gentleman from Albany [Mr. A. J. Parker], in regard to the appointment of the clerk, and I should have no objection whatever to the modification suggested by him in regard to that matter; nor should I have any objection to the other amendment which he proposes, that a judge elected for the term of fourteen years should be ineligible to re-election. Indeed, it strikes me that that would so fix the provision that it would meet the views of all, and would furnish a common ground upon which those in favor of life tenure and those in favor of a term of years could come together and agree. When we come to the other question, of the election of judges of the supreme court, there is more ground for difference, but I think all will be embraced by the suggestions which have been made by gentlemen here, of so much experience and ability, of the necessity of permanency in the court of appeals, the necessity of a court to whose decisions we can all appeal with confidence, and which will gain and retain the confidence of the entire State.

Mr. BARKER—Will not the gentleman withdraw his amendment, and propose it to the second section offered by the majority of the committee, and let the question of tenure be disposed of by a direct vote?

Mr. A. J. PARKER—Why not take a vote upon the proposition of the gentleman from Fulton [Mr. Smith], to substitute the second and third sections of the minority report, and then present amendments afterward? That will present the question. I do not know that he could accept the amendments which I shall propose. If this substitute is adopted, I intend then to offer an amendment which I have prepared, which will make a judge ineligible for re-election, after a term of fourteen years, and which will also provide that the clerk shall be appointed like the reporter.

Mr. SMITH—I accept those amendments.

Mr. HALE—I suggest whether a further division of this question should not be made; first voting upon the question of tenure, and then as to classification.

Mr. A. J. PARKER—Then I will state my amendments. I propose, in the third line of the second section of the substitute, after the words "State and," to insert the words "who after the first election shall." Then, at the end of that section, I propose to add the following words: "Every judge who shall hold his office for fourteen years shall be ineligible to a second term." And in the next section, at the end of the fifth line, I propose to insert, after the word "reporter," the words "and clerk;" and I propose to strike out, in the next line, the words "other than clerk."

Mr. SMITH—I accept those amendments.

Mr. WAKEMAN—I call for a division of the question, so that we may first vote as to the term of years.

Mr. CONGER—I feel great diffidence in undertaking to present my individual views in regard to the merits of the proposition submitted at this time. While I cannot claim to be actively of the profession, having of recent years had but a lim-

ited connection with the ordinary routine of practice, nevertheless I have certain general ideas on the relation of the profession to the judiciary and of the judiciary to the people, which I deem to be of the highest importance; and, therefore, I shall pray the attention of the committee while I undertake to present them, perhaps in various aspects. I am primarily for the independence of the judiciary, more especially in the court of last resort; and I presume that this sentiment will meet with the unanimous concurrence of all the gentlemen present. The only point then available for discussion is, the manner in which that independence can best be secured. Now, in the first place, I am free to admit that, in all ordinary cases, tenures of fourteen years and tenures for life are about one and the same thing; although the expectation of life at the age of forty-five years if we look at the tables of Northampton or London, is greater than fourteen years, yet with reference to the whole body of those who are to be elected to this office as proposed at one time, the probability is very great that less than a majority under a life tenure would hold office for a period longer than fourteen years. But I apprehend that one difficulty that will present itself sooner or later will be this: as we have agreed upon seven as the number of judges, if we shall make their term to be fourteen years, we shall thereafter, and before we go out of this committee, resolve that there shall be one of the judges of this court of last resort who shall leave his place every two years, and that an election by the people shall be held every two years. I am aware that it is not now proposed; but that it is proposed that we shall elect the whole seven judges by the people for the whole term of fourteen years, and that in case of a vacancy occurring by death or resignation the Governor shall fill the vacancy by appointment; yet, so far as I have been able to watch the mind of the Convention, and the course of its deliberations, I think I can predict with reasonable certainty that if we adopt a term of fourteen years, with seven as the number of judges, we shall insist upon a rotation in office so that one incumbent shall leave his place every two years. This brings to my mind, and I think properly, the consideration of the question whether that mode of tenure is truly consistent with the independence of the judiciary, or if it is likely to be salutary in its influence upon the profession itself. I shall speak afterward perhaps of the influences it would have upon the great body of electors. I will premise what I have to say on this question with a few propositions which I think are deducible from my observations of the last twenty years, ever since the election of judges has been the law of this State. I think that few will doubt that in the selection of judges, whether in a State Convention for a higher court, or in local conventions for the supreme court, the selection has been more influenced by the profession than by any other class of men in society. Indeed, I may safely make the further assertion that, in the vast majority of cases the nominations of the incumbents of the office of judge, whether of the supreme court or court of appeals, have been nominations by the profession. Now, if that has been the rule here-

tofore, it will be the rule hereafter, in case we conclude to go on with the system of election and rotation in office, so that, so far as the nomination and selection of judges is concerned, the profession should be thoroughly satisfied. If, as was urged last evening by my friend from Dutchess [Mr. Nelson], bad judges are sometimes nominated, and judges who are found to be incompetent are selected, it is the fault mainly of the profession which puts them in nomination. I think now that a candid view of the whole duty we owe to the judiciary and to the people should make us wholly averse to the system of election for a term of years and to the principle of rotation. I will not detain the committee by allusion to distinguished cases illustrative of this view; as the case of one of the most distinguished jurists of New York has been already brought to the notice of the committee. But every member of the profession must know this fact, that in the vast majority of instances, when a judge is compelled to leave the bench, if he goes back to the bar, or seeks to resume his professional duties, it is to find himself without clientage, and doomed, if he has not amassed a sufficient competency, to earn his livelihood by writing cases or text-books, or by some other inadequate means of support. I say, then, that the profession owes it to itself for this reason— if there were no other—to see to it, that when a man is taken out of his professional practice and raised to a position nominally of honor, he shall not, in consequence, be doomed at some future day to poverty or a meager dependence. However gentlemen may look at it in cold blood, when it comes practically home to members of the profession, it is a very important and, as it seems to me, a very conclusive view of the matter. Take, for instance, the case of a gentleman having a large practice and earning ten or fifteen thousand dollars a year, with a mind admirably fitted for the judicial office, and put the question to him, "Sir, will you leave your profession; will you throw away your prospect of accumulation; will you take this office to which your brethren in the profession desire to promote you, and run the chances, in case you live out the term of your office, of being doomed to beggary or a means of support entirely inadequate to your present expectations?" In the majority of instances where you put such an inquiry, the answer must be in the negative. There are a few exceptions, and they generally consist of cases where the party who consents to receive the nomination has means of support independent of his profession. There may be a few cases where the desire of honor and the promptings of ambition will lead a man, especially if his family be not large, to run the risk, but they are very few. Now, I say that the profession owes it to itself that we shall not organize a law or a series of provisions in the organic law of the State which will limit us to choosing judicial candidates either from among those who have independent means of support or from those who may be willing to run the risk and take the chances of the future. You will probably judge, Mr. Chairman, from the tenor of these remarks, that I wish to get at the germinal idea of what should be the true theory

of judicial office and tenure, especially in the court of last resort. When I remember, sir, that four centuries ago this very year, Louis XI, clothed with power which, in this age, we would not hesitate to pronounce despotic, uttered the sentiment, memorable in his day and for all future time, that the judiciary should be independent in the tenure of their office, and not removable even by kingly power, except for cause, I can hardly suppose that, in this age of the world, the people or the profession desire, through motives of jealousy or fear of the selection of incompetent men, to degrade the judicial office in its tenure, or to bring it down within the ordinary sphere of popular control. If we mean effectually to lay foundations of independence for these officers, we must see that the means that we employ are adequate to the end; we must see that, so far as we can, they have sufficient support during their term of office; and, in addition to that, we must see, also, that they have all the conditions necessary to secure a true independence of mind, the chief glory and dignity of the incumbent of such an office. I do not know what sentiments may fill the minds of other gentlemen here, but I am free to say, that, in looking over the whole history of the organization of courts from the earliest days of Anglo-Saxon law down to the present time, I know of no court that meets my views of proper independence, and meets them so fully and entirely, as that court which our ancestors founded in the Constitution of the United States; I mean the Supreme Court of the United States. Nor, in reviewing the lives and doings of eminent jurists, does my mind revert to any one who so commands the attention, the respect, I would say almost, the adoration, of the people of this country, as that man who, appointed by Washington, filled the office of Chief Justice of the United States until God took his life; and filled it with eminent ability, supreme command of the respect of the profession, and unbounded admiration of the whole people. Do you suppose, sir, that such a man as John Marshall, taken from the ranks of the profession, and appointed to an office, the tenure of which was liable to be cut short by caprice or design on the part of the government or of the people, liable to the influence of the political changes constantly going on in the country, and subject to the cardinal law of American politics, rotation in office, would ever have developed those masterly powers which make his name imperishable in the records of judicial fame? I think it must be evident, Mr. Chairman, that you can make your judge, if you take him as a young man, just as you see fit to mold him. If you give him a tenure which will enable him to realize the highest conceptions of judicial excellence, if he has the merit and the intellectual power, he will reward you by decisions which will stand the test of ages. Now, I do not mean to say it necessarily follows that a judge who holds his office for a limited period of years is of necessary less competent, or has not the same motives to do the best he can under the circumstances that a judge has who holds his term for life, but I do say that, although you may secure under the latter system judicial decisions of fair standing and merit, you can never find a man who

will rise under it to the highest walks of judicial life. Therefore it is, I think, that the profession owes it to itself that, when a man is called from his practice to take an office of such supreme importance and dignity as that of judge of the court of appeals, it should see to it that there are no conditions thrown about his office which will impair his usefulness or hinder his rising to the highest possible point of judicial eminence; and for this reason, sir, I am in favor of making this office an office for life. It is immaterial to me whether judges of this grade are elected by the people or appointed by competent authority. From the report of this committee, and from the general sentiment expressed by the Convention, I presume the office must be elective. But if the people accept the Constitution, and then, in their primary conventions, undertake the work of selecting competent men to fill this office, the profession will find it to its interest to nominate men of fitness and integrity, and possessed of every power and function necessary for a proper discharge of the duties of the office. There are many other thoughts which connect themselves in my mind with the discussion of this subject, but I do not desire unnecessarily to occupy the attention of the committee. There are minds here in active professional life who can take up these thoughts so loosely thrown out, and mold them in a more cogent appeal.

Mr. M. H. LAWRENCE—I desire to ask the gentleman what his opinion would be of the plan of electing the judges for a term of years—long or short, as might be preferred—and then retire them on some system of half pay?

Mr. CONGER—Well, Mr. Chairman, the proposition is presented to me now as a novel thought, and I would say, on the first glance at it, that it is not very probable that the people or the Legislature would sanction the doctrine of half pay to the judiciary; nor do I suppose that it would be consonant with the dignity of such an office as I have sought to portray to accept such half-pay compensation.

Mr. S. TOWNSEND—I would suggest to the gentleman that in England, where they have a very good judiciary, they retire the judges on half pay.

Mr. CONGER—Judges may be retired after their mental and physical powers have become insufficient for the performance of the duties of their office, but no such distinction as that is proposed here, or at least I do not understand that it is from the report of the committee.

Mr. HARRIS—Is it in order now to offer a substitute for the section?

The CHAIRMAN—It is in order.

Mr. HARRIS—Then I offer the following substitute:

There shall be a court of appellate jurisdiction, called the court of appeals, composed of seven judges who shall be elected by the electors of the State. They shall be classified so that one judge shall go out of office at the end of every second year and after the expiration of their several terms under such classification, the terms of office shall be fourteen years. The judge having the shortest term to serve shall be designated chief justice and no judge who has had

the office for fourteen years shall be eligible for a second term.

Mr. HARRIS.—Mr. Chairman, this section, as I have proposed it, does not materially change the substitute pending before the committee, but I think it has somewhat improved the phraseology. It provides that seven judges shall be elected in the first instance, that they shall be classified, so that one of the seven shall go out of office every two years, thus making the tenure of one judge two years, of another four years, of another six years, of another eight years, of another ten years, of another twelve years, and of the other fourteen years; and it provides that the judge who has the shortest time to serve, as is now the case, shall be the presiding judge or chief justice, and thus it avoids any scramble between the judges themselves as to who shall be chief justice. Every one will have his term for two years as chief justice; and then I intend to provide that a judge who has held his office for fourteen years shall be ineligible. Of course, no one would think of applying the provision of ineligibility to the other judges, whose term of office had been less than fourteen years.

Mr. A. J. PARKER—I prefer myself the substance of the amendment proposed by the gentleman from Clinton to the last amendment proposed by my colleague, mainly because I dislike the mode of selecting the presiding justice as suggested by that gentleman. He proposes in effect to retain the present plan of selecting the presiding judge. The one who has the shortest term to serve, under the present system, is the presiding judge in the court of appeals. The consequence is, that the presiding judge changes every two years. Just as he gets well acquainted with the duties that are peculiar to that position, another judge takes his place. Now, I think experience has shown that that is not a good mode of selecting the presiding judge. I would much prefer either the plan of the majority of the committee, or that of the minority, or the plan embraced in the substitute offered by the gentleman from Fulton [Mr. Smith], that the court shall choose its own presiding judge. My friend says it would be likely to lead to a scramble. I can hardly think that any such consequence would follow. I think the judges, the seven judges who are to sit together, are very competent to select one of their number to preside. At all events, when one has been selected and has become accustomed to the duties, if he presides acceptably, there would certainly be no attempt to make a change; and it seems to me much better that he should continue to be presiding judge if he does preside acceptably during his entire term, than that there should be a change every two years. It seems to me that is a much greater evil than the bare possibility that there may be a scramble for the office. I did prefer a different mode of selection, and I proposed in the Judiciary Committee that six of the judges should be selected by the people and that the presiding judge should be appointed by the Governor. I preferred that mode, but it was voted down in the committee, and I was obliged to abandon it. I prefer that mode now, but I suppose it is useless to make a proposition of that kind here. I pre-

fer, therefore, as things now stand, to let it rest as it is provided in the report of the committee, and let the court select its own presiding judge. They are certainly very competent to know which of their number is best fitted for that peculiar duty. Now, in regard to the phraseology; my friend thinks has been improved—perhaps it has, but in one respect I think it has not been. "Every judge who shall have held his office for fourteen years shall be ineligible." That might perhaps be construed in a mode not intended. You can not say that a man has held his office fourteen years who runs for office a month or two or three before it expires. I should prefer my own phraseology, "Every judge who shall be entitled to hold his office fourteen years." But that, perhaps, is a mere trifle; the main difference between us is as to the mode of electing the presiding judge.

Mr. VAN COTT—I hope that the amendment proposed by my friend from Albany [Mr. Harris] will not be approved by the committee. I think the method of designating a presiding judge is peculiarly objectionable. I wish that the presiding judge may be the chief justice of the court; that he may be the first mind in the court; that he may have the highest reputation in the court; that he may have the largest judicial experience in the court; that he may be recognized, in the State and out of the State, as the first man in our judicial establishment. I do not wish that the chief justice should be selected, merely, from the necessity of having some one to preside and preserve order, and indicate the course of business, applying the formal rules of the court; but that he should be a prominent man, if there be a prominent man, for talent, and learning, and character and reverence. Now, the idea of my friend from Albany [Mr. Harris] seems to be this: to make this selection of the presiding officer, and the creating of a chief justice, a mere matter of lottery; for, upon the principle of rotation proposed by his amendment, the judges are to go out at the end of every two years, and the order in which they shall go out is to be determined by a lottery. Then, instead of having, as the chief justice, the one who is there longest, who has the most experience, and who is therefore fitted for the function of chief justice, he selects with an impartiality that is not to be questioned, the man of least experience always to be the chief of the court. The man who is to be there two years is better for the chief, according to his principle, than the man who is to be there four years. The man who is to be there four years is better than the man who is to be there six years; and the man who is to be there six years is a better man for this position than one who is to be there ten or twelve. Now, it seems to me that this is an invasion of the true order, and it is an utter disregard of the principle upon which any chief of the court should be selected. I agree with my other learned friend from Albany [Mr. A. J. Parker], in his preference for the selection of a chief justice of the court by the Governor. I concurred with him in committee, and will vote with him here if he proposes an amendment to have the judge who is to be the chief of the court appointed by the

Governor, giving him the largest range of selection from the learning, the character, and the forensic reputation of the State for the chief of the court, and thus do here as they do in England, and have done there with splendid success, in the selection of a long line of famous chief justices. But if this method is not adopted as the better method, then I am in favor of having the court itself select its chief, and after it has ascertained in what order the judges are to go out, then the judges, in view of all the facts of the longer and shorter terms, may select from their bench the ablest man, the man who is most congenial to the whole bench, and the fittest man in the judgment of the bench for the place of chief justice. If we can intrust them with all the great and transcendent functions of the court of dual appellate jurisdiction, it seems to me we can intrust to them this selection of that man for chief justice who is fittest for the office in the court. I hope, therefore, that that part of the amendment will be adopted. But I object to the other provision—going out in rotation. I think it is wrong in principle and pernicious in effect, especially in connection with the provision that the judge shall be ineligible after the term of fourteen years. Now, under this provision, the judge who holds for ten years is re-eligible; the judge who holds for twelve years is re-eligible; the judge who holds for thirteen years and nine months and then resigns in order to save his re-eligibility, is re-eligible, but the man who stays there through his whole term, who has had the longest term, who is pre-eminently the judge of the court and longest and best known as the judge of the court, in the ripeness of his experience, and in the fullness of his judicial strength and fame, is to be thrust out from re-eligibility to the court. But, sir, I am against the change to the period of fourteen years from the life tenure. Now, it is agreed on all hands—for it seems to have met with the common consent of the Convention—that a longer term of office than eight years should be fixed for the court of last resort. Now observe what we have consented to, so far as we can gather this consent from the expression of the sentiment of the Convention. In the first place it is agreed that there is a broad distinction between the functions of the legislative officer and the executive officer, and those of the judicial officer. We have made the tenure of the Governor two years, we have made the longest tenure of legislative office two years. We rise from that at a single bound to the period of fourteen years as the term of the judicial office. It is at once a recognition that there is in the constitution of the judicial office a vital difference, demanding this difference in the term. What I ask is, that the Convention, recognizing that immense difference in the nature of the functions of the judge from those of the senator and the Governor, should follow out their own principle to its just results. And what is that underlying principle, distinguishing between the two? It is that the function of the judge has no relation to policy whatever. The legislative authority determines the policy of the State—what the law shall be—what the general course of the life of the State, so far as it can be regulated by statute,

shall be; and it prescribes the policy with absolute force, so far as it can be prescribed and fixed by mere legislation. The function of the Executive is merely to see that the laws are faithfully administered. He finds them at hand, made by one department. He finds them at hand, construed by another department. His sole function is to preside and see that the laws are faithfully executed. Now, sir, in this business of making law, and to some extent in the administration of law, the element of mere will intervenes; of choice, of discretion, of adoption and rejection; but the function of the judge is fixed and absolute. It does not depend upon his ideas of policy; it does not depend at all upon his will or discretion. He is there as the magistrate to read the law, to interpret it and apply it to the rights of parties in their persons and in their property; to say what the law is; to give effect, so far, by a just interpretation, to the will of the law-making power; and then to hand over the execution of his judgment to the executive department; to see that that will he has interpreted is made effectual, and that all rights of person and of property are secure under the law. Now you will see the importance of this distinction in its relation to certain popular ideas which prevail in the Convention and in the State. So far as government and its administration depend upon will, the will upon which all depends is the will of the people. It is for them to say what the policy and the law shall be. It is for them to say to whom the general executive administration of the law shall be intrusted. So far as they are within the region of will it is the will of the people on the fundamental principle that the sovereignty shall rule. But when you come to the bench, to the solemn functions of justice, what has the will of the people to do there? The will of the people withdraws at once. The Executive can not approach the court although it has the whole military power of the State at its back. The will of the people, through its law-making department, cannot approach the court except in the form of solemn statutes. The court sits there, beyond the region of will, serene, to look at the law; to see, not the parties, but the question before it; to determine upon the great principles of justice; defying will, defying popular excitement, defying influences which would disturb it in the faithful administration of a pure and impartial justice. It sits there in that serene region to interpret and proclaim the law, and to protect the citizen in his person and in his property. Now, sir, it may very well be that, in the selection of a judge, you may bring in the people to make the selection instead of intrusting the selection to the executive department of the government. My own preference is for the system of appointment, but I admit freely that the vice of the elective system, as it has existed under the Constitution of 1846, is not so much, if at all, in the method of selection as it is in the method of utterly destroying the independence of the judge after you have selected him. If there ever was a system devised by human wit to get a political man on the bench, the least man, the least reverent in his character, the least impartial, the most under influences which ought never to affect the

mind of a judge, that system is devised and is to be found embodied in the Constitution of 1846. But it does not depend so much upon the manner in which we get the judge on the bench as the manner in which we keep him there and enable him to exercise his function. Get him there by the popular vote if you please, or by appointment of the Governor and Senate, if you please, but after you have got him there, leave him there to ripen by experience,—to enlarge his learning, to be utterly independent of every thing which can approach and improperly influence the mind of a judge. Leave him there in a state of perfect independence, having no fear, but the fear of God, which casts out all other fear, to influence him in the performance of his great magisterial functions. I admit that whether the report of the committee, or the amendment, is adopted, we have made a great advance and improvement upon the Constitution of 1846, in lengthening the duration of the judicial offices; but my objection to the amendment, reducing the tenure from life to fourteen years, is just here: fourteen years are a very large portion of the effective part of every human life. You take a professional man at forty, when he is about ripe, and put him in service for fourteen years, and you have carried him to the age of fifty-four. You have got him to that period where he begins to feel the approaches of age; when his habits are fixed; when he is less flexible than in the earlier periods of life; when he is less fitted for change; when he is less competent to enter into new conditions, and to be effective in new conditions and relations. You take a man, who, when he goes on the bench, ought to go there consecrated and dedicated to the greatest office and the highest functions of the State. You ought to make him feel that he goes there to give up his life to the State—to give up his life, all the force that is left of it and can be made effective—to the performance of his great judicial functions. But what do you propose to do when you limit his term and dismiss him from the bench at this ripe period of his life? You restore him to practical life, with new habits that have become rigid on the bench. Taken away from the clients with whom he had an immense practice before he left the forum to take a seat on the bench, you take him away from all his effective power, or most of it. You restore him, with powers greatly impaired for forensic use, at the period when you have rendered him ineligible for further judicial service. Now, sir, is that dealing generously or fairly with a faithful public servant? I put it with reference to his interests and with reference to your interests. You want, when you put him on the bench—assuming that you have selected the ablest man you can find—to say to him, "There, you are put in a great and permanent trust; you have severed yourself from your political and professional life; you have severed yourself from your clients; you are never to know them as clients again. You are taken out of the commercial community, the very community in which you have been brought up, and in which your interests are at present most intimately bound up. You are, separated from them, never to know them any more, except as they are a part of the great mass of the social and

political interests of the State. We ask you to cut yourself off from clients and political parties, from commerce and from every thing that will prevent the complete dedication of your life to these new functions, and now we will put you where, doing that, you may have, although a modest competency, you may at least have that modest competency so long as you are physically and intellectually competent to perform, and so long as you do faithfully perform, the duties with which we now intrust you." See, sir, the difference between fourteen years and the life tenure to a man so circumstanced. When his tenure is a life tenure he enters at once upon these duties, knowing that the business of his life now is entirely changed and his character entirely fixed. He has no interest with reference to his subsistence, with reference to his family, with reference to his secular pursuits in the way of business. He has no interest except the interest of administering justice, wisely and well. But if you change the condition, and tell him that at the end of fourteen years—or, as the amendment of my friend from Albany [Mr. Harris] provides, at the end of six, or eight, or ten, or twelve years—at the end of fourteen years he is to go out of the judicial office and to resume such connection with the business world as he can, you oblige him, during his whole term of office, to keep up such business connection with the world as he can. You anchor his interest, not in his court, but with the clients and in the community to which you are to dismiss him. You anchor his interests with his commercial connection. You anchor his interests with some other pursuit, to which his mind is half of the time turning, and his eyes half of the time averted from the particular functions with which he is intrusted as a judge. And you keep up in his mind, and in the mind of his family, throughout his whole term of service, this idea, which presses upon it as a nightmare: "the time is every day drawing nearer and nearer when I am to be turned out of my office and back again upon the world, and I am to find some new method of getting my children bread. I am, in my old age and with enfeebled power, to be dismissed to new labors and new interests and a new struggle for subsistence." Now, I can understand, if we gave our judges the splendid salaries which are paid to judges in England, a prudent man in fourteen years would save a handsome competency and retire from the bench without any of the oppressive anxieties to which I have referred. But upon the pittance which you give your judges, and—although you increase the salaries—upon the pittance which you will always pay your judges, this thing is impossible. The effect is inevitable that through the whole term of judicial service, the judge is to be a prey to those merely pecuniary anxieties, which he is to meet at the end of his judicial life, when he is to be thrust forth, almost a pauper, upon the world. Now, what do you gain by the difference between fourteen years and the life tenure? Upon a very thorough examination, it has been ascertained that the average duration of judicial life is from fourteen to sixteen years, in England, upon the bench of the supreme court of the United States, on the benches in those

States where the tenure is a life tenure. You make a difference then, somewhere between the period of fourteen and sixteen years. You make that a little more certain by your fixed rule, than it is made by the average course of human life, and especially of judicial life. What do you gain by the little time that you may thus deduct from the judicial career, by fixing it at fourteen years? Nothing that is practicable; nothing of appreciable value. But what does the judge lose? He loses in this element of the uncertain duration of his official life, this uncertainty that stares him in the face, from the beginning to the end of his judicial course, as to what is to become of him and his family when he reaches the prescribed end of that course. It makes the difference of ease, and comfort, and independence to the judge. It makes all that difference to him. It makes no difference to you, except it makes the difference to you that you have got a whole judge, with his whole mind, in the one case, and you have a partial, sickly, anxious, fretting judge in the other case, throughout the whole period of his judicial service. I therefore submit to this committee that you gain nothing worth speaking of among thoughtful men, by fixing the tenure positively to the period of fourteen years; but by leaving it upon the principle of the life tenure, you put it where it may make an appeal to every honorable and every just sympathy of our nature. You place the judge where you make him a permanent, independent, respectable, and, at the same time, a happy man, while he is rendering to you the greatest of human services. I hope, therefore, that the amendment proposed by my friend from Albany [Mr. Harris] may be rejected.

Mr. A. J. PARKER—If that amendment is adopted, we shall meet this difficulty. If the judge of the court of appeals having the shortest term to serve, resigns or dies, his place is to be filled by the Executive, and the consequence of adopting this amendment will be that the judge appointed by the Governor to fill a short term, and perhaps without any judicial experience whatever, will become at once the presiding judge of the court of appeals, over others, elected, and some of whom may have served nearly the period of fourteen years. For this reason alone, sir, if this was the only one, this amendment should not be adopted.

Mr. HARRIS—This proposition is that which has been in force for the last twenty years. I am not sure that a modification would not be judicious to meet the last objection made by my colleague, so that the judge, the elected judge, having the shortest term to serve, should preside. I should have no objection to such a modification. But, sir, I think the committee will be in favor of adopting this system of equality. I am, myself, for equal rights. We elect a court of seven judges—I assume that they are all of equal capacity, equal qualifications, equally entitled to fill the position. Now, unless such a provision as this is adopted, we may have one of those judges, more artful and ambitious perhaps than the rest, setting himself up as a candidate for election as chief justice. He succeeds. By and by, in the process of time, the political complexion of the court changes. We elect a judge every two

years. The political balance of the court is changed, and now we must have a democratic chief justice, or a republican chief justice. The present chief justice is to be turned out. And thus we have a repetition of this scramble for precedence. There is a better way—a far better way. Let each judge, in his turn, act as chief justice, and preside for his two years. The gentleman from Kings [Mr. Van Cott] was not quite fair toward this proposition, when he said that the effect of it was to select the judge who had served the shortest time as chief justice. The proposition is exactly the opposite of that. It is that the chief justice shall be the judge who has served twelve years, and for the last two years of his term of fourteen years, he shall be the presiding judge. That is the effect of the proposition. It is impartial. It saves us from an unseemly scramble after precedence in that court.

The question was put upon the amendment offered by Mr. Harris, and it was declared lost, there being, on a division, 23 ayes—noes not counted.

Mr. BECKWITH offered the following amendment:

SEC. 2. There shall be a court of appellate jurisdiction, called the court of appeals, composed of seven judges, one of whom shall be chief justice, and shall be appointed by the Governor, with the consent of the Senate, and who shall hold his office for the term of fourteen years; the other six shall be elected by the electors of the State, and hold their office for twelve years. The judges first elected shall be so classified that one shall go out of office, and his place be filled by a new election, at the end of every second year.

Mr. HALE—I call for a division of the question, that it be first taken upon the appointment of the chief justice.

The CHAIRMAN—It will be so divided.

Mr. CONGER—I do not wish to obtrude any further upon the attention of the committee, except to draw attention to this fact: that if this amendment should prevail, you would have a court which you desire to make a unity with a double first power. You would have a court that you wish to present a unity in all its aspects with a divisive force in it, owing to the difference of the source by which the court is constituted. How can you secure a unity when your political constitution of the court is diverse and opposed?

Mr. BECKWITH—I think the objection which the gentleman has raised to the proposition now presented to the consideration of the Convention is all in his imagination. If a chief justice, of the ability and character which a chief justice should have, is appointed by the Governor, his object will be to preside with dignity, and he will be, undoubtedly, a man of learning in the law, and he will make an effort to decide cases upon principle. I think that that objection will amount to nothing at all; that there will be just as much unity as if the court were otherwise constituted. Where there is no unity, it arises from the minds of individuals rather than from the source from whence they obtain their authority.

Mr. HARRIS—I would ask the gentleman from Clinton [Mr. Beckwith] whether it would not be better to make the tenure of office the

same? He makes the tenure of those elected to the office twelve years and of the chief justice fourteen years. I would suggest that he should change it to twelve. I am in favor of the proposition.

Mr. BECKWITH—I will change it in that respect.

Mr. WAKEMAN—That is precisely the amendment I suggested some time since. There is an advantage in selecting the chief justice by the Governor. He would look over the entire State, and the Governor may with propriety select a man eminently fitted and proper for the place, and can hardly make a mistake in his selection. And the difficulty is entirely done away with as to the manner of selecting the presiding judge. It will give dignity to the position, as suggested by the gentleman from Kings [Mr. Van Cott], and the great State of New York will have a chief justice known as such throughout the extent of the country. The difficulty has been that individuals coming from other States or other countries find one year one judge, and two years afterward another, and there is no permanency in the office, and it thus loses much of its dignity. I hope, as a division has been called for by the honorable gentleman from Essex [Mr. Hale], we shall take a direct vote upon this precise question, and make it a dignified office, by which the chief justice of this great State shall be known everywhere as the chief justice, and that his opinions may have influence throughout the length and breadth of the land. Therefore let us come to a direct vote upon this question, and I hope it will receive the favorable consideration of this committee.

Mr. GRAVES—I desire to ask the gentleman a question: whether he supposes the Governor will be as well qualified to judge of the legal ability of one of the judges of the court of appeals as the judges of the court of appeals themselves?

Mr. WAKEMAN—I do not understand that he is to select among the number. I understand, by the amendment, that he is to select one from the great body of the people, and not one of the elected judges; and I believe, with the aid of the profession to advise him in his selection (for the judges are mainly selected by the profession), he will be able to select one eminently fitted for that position.

Mr. GRAVES—Does the gentleman believe that an adler man will be found for the chief justice than any one upon the court of appeals?

Mr. WAKEMAN—Perhaps not, because I should hope that every one of the members of the court of appeals would be proper and able to fill the position of chief justice; but it takes away this difficulty with reference to the election of the chief justice and gives him permanency of position, and there can be no difficulty from the balance of the court. It strikes me with favor. I am told that that proposition was favored very much in the Convention of 1846, although it failed; and I am told that members of the judiciary committee vindicated this amendment in this Convention, but that it failed. It strikes me that it will be a very salutary and proper amendment to be adopted here.

Mr. CONGER—Will the gentleman from Gen-

esee [Mr. Wakeman] allow me to submit a question to him?

Mr. WAKEMAN—Certainly, I will answer any question that I can.

Mr. CONGER—In submitting such a Constitution to the people, how will the gentleman explain to the people that he sees fit to intrust them with the selection of those inferior judges, but is not willing to intrust them with the selection of the superior chief justice, but leaves the appointment of the chief justice to the Governor and Senate? Can he consistently explain it to the people upon the ground of the superior fitness of the Governor and Senate to make that appointment? Would not the people reply that if they were so much more competent to select the chief justice, why were they not more competent for that reason to select the whole bench?

Mr. WAKEMAN—There are a great many men who believe that the Governor would be better fitted to select the whole bench. I do not think so; but I think in this particular that it is a better way to arrange it to have the Governor appoint the chief justice, and select him from the great body of the people, with a view that he should be a chief justice. I believe the people will be entirely satisfied. He would not, in one sense, be regarded a superior to the other judges, except as to the tenure of his office, and his position as being the chief.

Mr. McDONALD—Will the gentleman allow me to ask him a question? Does the Governor in selecting the chief justice select from a larger body than the people when they select the other six judges?

Mr. WAKEMAN—Certainly not, but the system, as reported by the committee, is that you are to select from the judges themselves; that they are to select among their own number for chief justice. That is one way, and every two years the judge who has the shortest term to serve shall become the chief justice. He becomes nothing more than the chairman of a meeting, substantially. He is not known as a chief justice, and the State of New York would not be known as having a chief justice. I desire that it shall have one who shall be known as such throughout the other States of the Union. That is the difference. With reference to the question propounded by the gentleman from Rockland [Mr. Conger], there is not very much difference. People differ somewhat as to the propriety of electing judges at all. I believe it has worked well for the last twenty years, and I am in favor of it, but I see no difficulty whatever in explaining to the people, and saying that the chief justice, as such, shall be selected in this way. I am not very particular about that, but in all events I am in favor of some system by which the chief justice, either appointed by the Executive, or in any other manner, shall be a permanency, to be known as the chief justice of the court of appeals.

Mr. BECKWITH—I think I shall have to change that amendment back to twelve years; otherwise the first justice will have to go out at the end of four years, and the others every two years, to have it go along regularly.

Mr. WILLIAMS—I understand it to be the object of the gentleman from Albany [Mr. Harris]

to have the same length of term for the chief justice with the others. That can be done by making them all twelve years instead of fourteen.

Mr. BECKWITH—I would put it at fourteen years, but you can easily see that if one goes out every two years, he will hold his office but twelve years.

Mr. HARRIS—My suggestion was that the chief justice should be twelve years, and make the tenure of the judges of the court of appeals twelve years.

Mr. BECKWITH—I will change it to that form; that will accomplish it.

Mr. SMITH—One suggestion I would like to make. I shall vote for this amendment, and for this reason: there are many in the State who believe that all our judges should be appointed, but I think they are in the minority. This amendment seems to be a compromise between the two opinions, as it allows the chief justice to be appointed, and provides that the remainder of the bench shall be elected by the people; and it may satisfy that portion of the people who desire to have the judges appointed. I think we are all prone to forget, in our deliberations here, that the Constitution which we may frame is to go before the people; and while we are desirous to secure the adoption of our peculiar views upon the questions that arise, we must not forget that others may differ from us, and that our work is to be submited to the people.

The question was put upon the portion of the amendment providing for the appointment of the chief justice, and it was declared carried, on a division, by a vote of 54 ayes—does not counted.

Mr. RATHBUN—I call for a further division of the question—first, in regard to the term, and then in regard to the number of judges.

The CHAIRMAN—The Chair will state that the number of judges is precisely the same as in the report of the committee, so that that is not an amendment.

Mr. RATHBUN—Then I ask that the question be first taken upon the term of office.

The CHAIRMAN—The question will be so put.

Mr. RATHBUN—I desire to say one word upon that subject. We are now considering the report of a committee of fifteen appointed by the President of this Convention, and appointed, evidently, with the design to embody in that committee the ablest and oldest in the profession in the whole body. They have probably devoted as much time and labor to the consideration of the questions submitted to them as has been done by any other committee of this body. We have had presented by way of a report their views in regard to the tenure of office. They propose that it shall be during good behavior or until the judge arrives at the age of seventy years. That portion has been given up. I understand it, substantially, and the proposition, remaining as coming from the committee, or the shortest term for which any of them seek, is fourteen years. Now, in my judgment a departure from the recommendation of the committee ought not to be indulged in unless upon the very best consideration and the most thorough examination. Our impressions are various, almost, as there are persons in the Convention. When

we find such a committee as that, who have given their time and labor in considering all these questions, and have gone on step by step, until they have settled down upon a term which we may accept, as fourteen years. I submit, it is hardly safe, in my judgment, to adopt impressions, hasty and not well considered on the subject, to shorten that term. Previous to 1846 our experience had been entirely opposite to the practice then adopted. The old judges, prior to the Constitution of 1821, were appointed during good behavior, and that was for life. In 1821 the Constitution then adopted limited the period to which the judges might hold, to the age of sixty years. That was thought to be an improvement. The result of it was, however, that, until the Constitution was amended again, Chancellor Kent, chief justice of the old supreme court, Ambrose Spencer, and the others (I only remember those two), who in 1846 were just as competent and apparently just as well qualified to be judges as at any other hour of their lives, were displaced, and instead of them, we had a different order of men. By the Constitution of 1821, no matter at what age a man was appointed judge, he remained in office up to the age of sixty years, provided he was not impeached. Now, we have tried an eight year system for twenty years, and I am a little surprised to find, as I do find here, a disposition to continue that short term, or to approach very near to it, for my observation and experience has been that we have had too much preparation, too much effort on the part of some of the judges to ingratiate themselves, for the last year or two of their term, with the people who controlled and managed the elections, for the purpose of re-election. That, perhaps, has been seen as little in the seventh, as in any district of the State; still we all feel and know that such a practice is prevalent. It has been my object—and I believe that it is the correct plan—to avoid the repetition of these elections. Give the judge a long term, render him independent of any appointing power, so far as it is possible. I prefer to make it so long that we can say to him, when he has done, that he should not be eligible for another term. But I doubt whether it is practicable to say that, because if you take a man at thirty-five and put him on the bench, and he serves fourteen years, at the end of fourteen years, though he is worth double what he was in the beginning, and has proved himself in every way fit and competent to fill the place, yet, he must be turned from the bench, and not allowed to take a seat there again. Although the people may desire his re-election, and although he may possess qualities desirable for a judge, yet he is thrown away because the Constitution decides that he should not be re-eligible. I do not like that. I do not like so short a term. There is another thing connected with the amendment immediately under consideration, which I dislike more than all, and that is, that you elect judges, according to this proposition, for twelve years, but in fact, continue to elect in two, four, six, eight and ten years, and the first thing you do, you put a man upon the bench for two years, and he immediately begins to electioneer for re-election; next, the man elected for four years comes up, and so on for the twelve years, all the

time, the judges upon the bench seeking for re-election. There will be vacancies enough from among the seven judges put upon the bench before the expiration of fourteen years, you will find enough new members infused into that body by death, resignation, or from some other cause, to sufficiently renew the body without making the term so short. I was in hopes we should get rid of the idea of rotation upon the bench, and re-elections. I like to see rotation applied to the Senate and to legislative bodies everywhere, so that they should be always fresh from the people; but I do not want to see that principle applied to the judiciary, which should be a permanent and independent body, able and independent enough to decide according to the law, and as their conscience shall demand.

Mr. GRAVES—I desire to move the reconsideration of the last vote that was taken, and that that motion lie upon the table.

The CHAIRMAN—A motion to reconsider cannot lie upon the table in Committee of the Whole. A motion to reconsider may be entertained at this time.

Mr. GRAVES—I desire—but I am not parliamentary enough to know what my rights are. I will move to reconsider. I am at a loss to determine on what principle—

The hour of two having arrived, the President *pro tem.*, Mr. ALVORD, resumed the chair and the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock, the President *pro tem.*, Mr. ALVORD, in the chair, when proceedings were resumed.

Mr. WEED—As it is apparent that there is not a quorum present, and as the special order for this evening, being in Convention, will necessarily call for votes quite frequently, there being questions upon which a division or the ayes and noes will be desired, and upon which they ought to be taken, and fearing that, if we go on with the special order, it will result in an adjournment, and desiring to go on with the business in Committee of the Whole, I trust unanimous consent will be granted to postpone the special order, and continue on with the report of the Judiciary Committee. If not, I shall move that it be postponed, believing that such a course will facilitate the business. The gentleman from St. Lawrence [Mr. Merritt] asks me to wait until Tuesday; I understand there is a special order on Tuesday, the report of the Finance Committee. I suppose it will be better to postpone it until after that special order. It will make no difference with the time in which we get through.

Mr. MERRITT—I move to make it the order immediately after the other special order.

Mr. WEED—I am willing to accept that.

The PRESIDENT *pro tem.*—There is no question before the Convention except that this matter be postponed until Tuesday next, immediately after the special order set down for that day. Are there any objections?

Mr. ANDREWS—I do not think the Committee of the Whole should take up the report of the Judiciary Committee, and come to a vote upon

that with less than a quorum here. I should have no objection to proceeding with the discussion in the Committee of the Whole, on the report of the judiciary, with the understanding that we must stop short of passing on questions. Whether that would be practicable, I do not know.

The PRESIDENT *pro tem.*—Does the Chair understand the gentleman to object to the amendment?

Mr. SMITH—I would like to suggest to the gentleman from Onondaga [Mr. Andrews] that this judiciary report, after having been discussed in Committee of the Whole, will come up again in Convention. I would like to know whether that would not answer the purposes he contemplates.

Mr. WEED—There is more than a quorum of members in the city. I think there will be some gentlemen here before we finish the subject.

The PRESIDENT *pro tem.*—The Chair understands the gentleman as objecting to the proposition of the gentleman from Clinton [Mr. Weed]. If there is any objection on the part of the Convention it will be so ordered.

Mr. WEED—I wish to suggest to the gentleman from Onondaga [Mr. Andrews], that it does not follow you have to remain in discussion of the Judiciary Committee's report. It is apparent if you do business with the number you have, you will have to do business in the Committee of the Whole; you cannot do it in Convention with less than a quorum.

The PRESIDENT *pro tem.*—If there are no objections on the part of the Convention, it will be ordered that this matter be set down as the special order for Tuesday next, to be considered after the other special orders. There being no objection, it is so ordered.

The Convention again resolved itself into a Committee of the Whole upon the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN announced the pending question to be upon the amendment proposed by Mr. Beckwith.

The SECRETARY read the amendment as follows:

SEC. 2 There shall be a court of appellate jurisdiction called the court of appeals, composed of seven judges, one of whom shall be chief justice, and shall be appointed by the Governor, with the consent of the Senate, and who shall hold his office for the term of twelve years; the other six shall be elected by the electors of the State, and hold their office for twelve years. The judges first elected shall be so classified that one shall go out of office, and his place be filled by a new election, at the end of every second year.

The CHAIRMAN—The question is on the second proposition—of tenure.

Mr. McDONALD—I understood, when we adjourned, the question was on the reconsideration of the first proposition.

The CHAIRMAN—The gentleman is correct. The gentleman from Herkimer [Mr. Graves] has the floor.

Mr. GRAVES—Mr. Chairman, when we adjourned this afternoon, I was about to submit to this Convention my views upon the question of

conferring upon the Governor of the State of New York the power of appointing the chief judge of the court of appeals. I am unable to satisfy myself by the reasons which have been assigned upon this floor of the propriety of delegating to the Governor of this State the power of selecting these officers. I do not discover the duties assigned to this officer to be higher or more exalted or responsible than those which attach to the other members of the court of appeals. I do not discover that it requires any different order of mind, any additional talent, any superior qualifications, other than such as belong to his assistant members of the court. Is it true, sir, that the people are competent in their sovereign capacity to select from among themselves men fitted and qualified to fill that responsible position? Has the question been raised here as to the power and ability of the people to wisely select officers for that position? And if there is no distinction in point of qualification, if the law, the duties and the necessities of the case do not require that there should be any marked distinction between the chief justice presiding over that court and his assistants, then I am at a loss to determine how it can be necessary that the Governor himself should be compelled to make these nominations. He is the Governor of the State of New York. With what superior ability and powers is he vested over and above the sovereign people of the State of New York? While I hold in high esteem the present incumbent in that office, while I hold in high esteem those who have preceded him, I ask, is he any thing more or less than the servant of the people selected and clothed with certain powers and with certain duties? And because he is the servant of the people, clothed with these ministerial and executive duties, does it follow that he is any better qualified to select an incumbent for that office than the people themselves? Why, there are a thousand men in the State of New York, to-day, if the emergency required it, who are as competent to fill the Governor's chair as the three last executives who have occupied that place, giving to them all the credit that their situation and responsibility demand; for I hold in high esteem the eminent qualifications of Governor Seymour, in high esteem the eminent qualifications and services of Governor Morgan, in high esteem the eminent qualifications of Governor Fenton; but yet it is not known to every member of this Convention that there are a thousand men in the State of New York, if the emergency required, who would as faithfully and as capably discharge the gubernatorial duties as either of those men? And, why, then, do we clothe these men with the power of selecting this officer, in preference to allowing the people to do it? One gentleman [Mr. Smith] has said on the floor to-day, that it has been demanded by the people that these officers should be selected by them, and that other classes of the community have demanded that the appointment should be made by the Governor, and that this is a compromise. Why a compromise, if there is really no distinction between the chief justice over that body, and other members, is it, to give, out of the whole number, the selection of

one by the Governor? Or is it true, as suggested by the gentleman, when he said it was a compromise, that the chief justice has the much higher and more responsible office, and therefore he should be appointed by the Governor? If that is true, then I ask what credit do you give to the people? You concede that the people have the capacity to elect six out of seven, who are inferior in qualifications, inferior in capacity, from whom are expected but little in comparison with the chief justice; but when an important and responsible position is to be filled, the people are disqualified to perform that duty, and the executive officer of the State is alone qualified with the power. I think that it is a miserable estimate to be put upon the intelligence and wisdom of the people. General Jackson very wisely said that the people are honest. I ask if it is not evidenced in every selection by the people? Take, for instance, the district here, where this Convention is sitting to-day; the people selected the present incumbent in the supreme court; he was selected by a party. The honorable Rufus W. Peckham was selected as one of the justices of the supreme court. And why selected? Selected for his learning and capacity, selected for his fidelity in the discharge of that duty? Was there a question over that selection? Did the people doubt his capacity? Were the people unqualified to judge of his capacity? Did they not acquiesce in the nomination without respect to party? Were they wise in that selection; were they competent to make it? I appeal to you whether, if that power had been conferred upon the Governor of the State of New York, he could have selected from this district a more competent or better qualified man? Sir, in the district where I reside, the chief justice, Le Roy Morgan, was nominated by a party. That party nominated him because, as I said of Justice Peckham, he had manifested his ability to discharge that duty and had the qualifications to enable him to respond ably and nobly to the duties devolving upon him. The other party acquiesced in that. The people admitted his capacity, and they elected him. Now, sir, were the people qualified to discharge these duties? And I appeal again, if all the Governors of the State of New York had been combined together to select two justices of the supreme court, to discharge those responsible duties, would they have selected better and abler men than Justice Peckham and Justice Morgan? Now, I can see no good reason why this power should be conferred upon the Governor. The people, in my judgment, are capable of making their own selections. And from whom does this selection originate? Who are the classes who give nominations to these men? Do they belong to the court of appeals or to the supreme court? Is it not known to you, Mr. Chairman, that the selection comes from the lawyers of the State of New York? No man is nominated to fill either of these positions against the judgment of the lawyers of the State of New York. They are the only ones who have the opportunity of deciding the judgment and capacity of the incumbent of those offices. They are the ones and the only ones who have the opportunity of determining the honesty and capacity of the men who fill

that position, and no nomination is made in this State except through, or by the consent of, the people. And are they capable of selecting? I appeal to you, Mr. Chairman, if the profession of lawyers are not wise enough, are not discreet enough, are not honest enough, to make that selection which will redound to their own credit, and which will call forth to discharge that duty, men who will be an honor to the State and the position they occupy? Sir, it is said here by one gentleman, that the selection of these persons to fill the position for a less time than twelve years demoralizes our courts; that the idea of officers being selected from the people each year gives the foundation for some iniquity, for some dishonesty, for some electioneering frauds to be committed. It seems to me that it is a poor tribute to be paid to the intelligence of the people of this State. Does the fact that men associate with the people, does the fact the incumbents in office are familiar with the people, does the fact that they have come from the body of the people every eight years, furnish proof that there is want of integrity, want of honesty, or want of capacity. Sir, in my judgment, the more a man mixes with the people, the more he appreciates the honorable motives of the people, and the more he yields to the dictation of the people, the better he is qualified to discharge the responsible duties that will devolve upon him. Sir, I am not able to discover a solitary reason why these men should not be selected every eight years, as they have been heretofore. I have heard upon this floor, Mr. Chairman, the allegation that if they were to be elected every eight years, that fact itself would demoralize the court and give an opportunity for the commission of fraud; and yet I have not heard from a single man on this floor an instance where a fraud had been committed. Not one. It is simply the *ipse dixit* of men who have made the broad assertion in the absence of corroborating circumstances. Sir, I had the honor of practicing as a lawyer before the year 1846, under the old Constitution. I hold in high reverence and in great respect the incumbents in the court for the correction of errors and in the supreme court. Many of them have "gone to that bourne from whence no traveler returns," and I hold their memories in high esteem; but by no means am I willing to pass a less meritorious compliment upon these men or detract from the merits of those who held office under the Constitution of 1846. Point me, if you please, to a single man or a single incumbent in the court of appeals, or a single incumbent in the supreme court, who is not faithful, who is not intelligent, who does not honestly discharge the duty devolving upon him. Why, sir, that system has brought into these positions honest men, faithful men, upright men, men who have sacrificed their time, their health, and their abilities, for the interest of the people of the State of New York. No allegations against them can be sustained, and no man can be found derelict in his duty. Why, then, make those sweeping assertions, that the system under which we have been practicing and the mode of selection is a bad one? Now it is said here, that we must change. Why change? As I said this morning, all changes are not reforms. I believe

we must be convinced of an existing error, before we are authorized to adopt a different system—before we should take up some new measure by which we are to be guided in our deliberations here. Permit me to ask if it is not safer to find some good reason why we should abolish the old before we establish the new? Now, sir, is there any probability of getting men who would work more faithfully than the men who have held the office of justice of the supreme court or the court of appeals? Is there any man within the hearing of my voice who charges them with a want of industry, a want of capacity, or with a want of fidelity? I have not heard it from one man here. Sir, I am one of those who believe, that when a man comes fresh from the people he comes an honest man in every sense. It is not always true, perhaps, that those officers who are selected by the people prove to be what the people believe them to be. But no man will say in his place, that the people intend to select corrupt men, bad men, dishonest men. They seek to select the best class of men for these positions; if they fail in it it is not to be attributed to their want of capacity, to their want of good intention; for such failure will arise, whether from selection or appointment. Now, sir, while I have said that those men who hold the office of justice of the supreme court and the court of appeals are able men, it has been said here by some gentlemen upon this floor that it was too short a time that the term should be fourteen years instead of eight; that this court should be re-organized, that it should be a court entirely independent of the supreme court; or, in other words, that no justice of the supreme court should be constituted a member of the court of appeals. Now, sir, if that argument is worth any thing, we should go still further. If the organization of the court of appeals is to be permanent, if fourteen years is necessary in order to make a substantial and reliable court of appeals, then, I ask, why not continue that term during a man's life, or until he is seventy years of age? Why limit him to fourteen years? Is it not true that we have changed, that the day of old fogymism is gone, and that Young America is ruling this country? Why, sir, we see in this Convention to-day young men who have not passed thirty years of their life, filling the high and responsible position of delegates to this Convention; and, sir, I hope I shall not be charged with a sycophant's part when I say they faithfully and honestly discharge the duties devolving upon them. Now, sir, it does not matter whether a man be thirty years old or whether he be sixty years old, if he be qualified to fill the office of justice of the supreme court, if he be qualified to fill the office of justice of the court of appeals. And no gray-headed dotard should be permitted to hold an office of that kind against the aspiring intelligence and integrity of Young America. Sir, these young men have put on the *toga virilis* of the Romans, and they are here and everywhere else qualified and competent to discharge their duty. I, for one, sir, am desirous that the road to fame shall be open to these young men, if they are qualified to discharge these duties, in preference to somebody else. Let the people select them. Let them go the ballot-box

and say who shall be the men to fill these places ; and whether the candidate be young or old, gray-headed or beardless, let him come to the discharge of his duties and fill this responsible position creditably to himself and honorably to the State of New York. Sir, I am opposed to all appointments. I am opposed to all long terms, because I want no man to fill any of these places who is not entirely qualified. And if, at the end of eight years, he has faithfully and honorably discharged his duty, and the lawyers feel disposed to recommend him for renomination, and the people, the honest people, are ready to respond to that recommendation, he will be re-elected. Then justice will be done, and these places will be filled by high-minded, honorable men.

MR. BECKWITH — Mr. Chairman, a word or two. In all things one of the first requisites is order; and in all deliberative bodies it is necessary that there should be a head or chief; and by the appointment of the chief justice, or, if the gentlemen insist upon an election, by having a judge elected as chief justice, we will give dignity to that position, as has been given to the supreme court of the United States by Chief Justice Marshall, and to the highest court of our own State by Chief Justice Kent. For one, I would like to see all the judges appointed by the Governor, with the consent of the Senate; but I doubt whether the people would be satisfied to have that plan adopted, and hence I have proposed the appointment of the chief justice by the Governor, leaving the other judges to be elected. It does not follow that the man appointed to that high office will be of a higher order of talent or acquirement than the other judges; nor does it follow that the Governor cannot, as a general thing, wisely select from the profession of the whole State a man competent to fill the position, and certainly I think he is fully as competent as the people at their State conventions to choose such a man. At these State conventions, probably more than one-half of the delegates will be men who do not belong to the legal profession, and who have very little knowledge of the leading members of the bar throughout the State. We often find the conventions composed largely of delegates who are not lawyers, and who have some other interest to serve, or some other object in view, such as the management of the canals, or the like. On the other hand, the Governor is usually a man who is well acquainted with all the leading members of the profession throughout the State, and if any one is competent to select a proper person to preside over the deliberations of such a court, he is quite as likely to be able to do so as any one else. I did not intend to say that the people may not select a competent man and elect him; but I think they are less likely to select a man of the requisite acquirement than the Governor is. Now, I have no objection to leaving the road open for "Young America" to come in and take these offices, if he only qualifies himself properly. I care not if a man be not thirty years old, if he would show himself to be competent in talent and acquirement to occupy that position creditably. I have no objection

to his being placed there; but I think that maturity of years gives dignity to the position; and the dignity of the court and of the presiding officers will add much to the confidence which the people will have in their decisions. I hope, therefore, that this amendment which has been adopted by the committee will not be reversed.

MR. E. A. BROWN — In my judgment, Mr. Chairman, this Convention has heretofore decided wisely, in the votes which have been taken, settling the principle that the chief officers of the State shall be selected by election by the people, rather than by appointment by the Governor and Senate. In monarchical institutions, where the ruler himself is hereditary and holds his office by inheritance for life, it is consistent with the leading principles of the government, that the judges and many other important officers of the government should hold office for life: but in this country, where the opposite principle prevails, where the people are the source of power, and are acknowledged to be so, it renders our system inharmonious, incongruous, to have a portion of our chief governmental officers selected by the Governor, as is here proposed, and another portion elected by the people. The fact is conceded that the Governor and the Senate have not the power to select any men better than the people; but the desire seems to be to yield to that sentiment which seeks to ingraft into our republican institutions remnants and fragments of monarchical institutions. It is said by one of the gentlemen, that he wants, in a chief justice, a man standing high among the people of the State, and among the people of the nation. Why, sir, what is the chief justice of the court of appeals, in the State of New York? Practically, he presides in the court, he calls the calendar, and, if there is any necessity for it, he regulates the calendar and takes the general direction of the business of the day; but is there any thing else under Heaven that the chief justice has to do? Dignity! An officer of dignity! That is what is wanted. And allusion is made to the chief justice of the United States. Now, I have no fault to find with the manner in which the judges of that court are appointed. They are properly appointed; and I see no more objection to the mode of selecting the chief justice or the other judges of that court. I have no objection to the judges of that court coming into court with silk gowns upon them; and further, sir, I would not object, if that were required, and I think it would be quite a proper amendment to make to this proposition here, that our chief justice of the court of appeals should be appointed by the Governor and Senate, that he should be furnished with a silk robe, a silver-gray wig, a gold-headed cane, and a three-cornered cocked hat, with gold band and tassels! Then you would have dignity! [Laughter.] Then the whole people of this State could look up to this great figure-head of justice and admire his dignity and the exaltation of his position. Dignity! What we want is *brains* and *business capacity*, for every-day hard work. Sir, has there been any difficulty as to the chief justice in the court of appeals under our present system? Judge Denio, Judge Comstock and other judges have

presided in that court in turn. Has there been any sort of trouble about their presiding under the existing practice? Has there been any complaint? And if so, is every thing to be set right by electing a man to sit there in the middle of the bench and be called the chief justice? The Governor and the Senate shall appoint the man who sits in the middle of the bench, between three others on each side of him, and speaks to the clerk and the orier, and the rest of the judges, who are to be treated as mere subordinates, are only good enough to be selected by the people, and the people know enough to select them. I trust, sir, that the system we establish will be a sensible one and in harmony with the principles of our government, putting its trust in the people. It is not disputed that the people have heretofore succeeded very well in this matter, and it is not at all likely that they will fail to do so in the future as well as they have done in the past; it is not probable that they will fail to select judges for the court of appeals sufficient in number, in ability and character, and for a sufficient or proper length of term, to discharge the duties of that court faithfully and well. I hope the motion will be reconsidered, and that this incongruity will be put out of the way.

Mr. FERRY—Assuming that all the members of the Convention desire the adoption of the Constitution which may be offered here, I would suggest that the action of this body so far, in regard to the matter sought to be reconsidered, ought to be, and in my opinion will be likely to prove satisfactory to the people of the State, more so than if there had been no action of the kind. It is evident, and we all know that there is a class of people in the State—quite a numerous class—who would prefer the appointment of these officers, and I confess that I am one of the number; but believing that I understand what the tone of public sentiment is upon that question, I am content to submit to it, for I have learned, sir, that the sun will continue to rise and set, although my peculiar views be not adopted on most questions; but there is a class of persons in the community who are less easily reconciled to a disappointment of this nature, and therefore it is well for us to do something to conciliate them, provided we can do so with consistency and entire propriety. But as an independent matter, I do believe that this plan is preferable to the election of all the judges, because it is introducing another element into the body of which the court is composed. I rose, however, merely to suggest to members the propriety of leaving this matter as it is, believing that it will be more satisfactory to our constituents.

The question was put upon the motion of Mr. Graves to reconsider, and it was declared lost.

Mr. A. J. PARKER—Is it in order to offer a substitute?

The CHAIRMAN—A substitute is not now in order, there being two amendments already pending.

Mr. A. J. PARKER—I would like, then, speaking upon the amendment that is before us, to ask that at the proper time I propose to offer an amendment to this effect: "There shall be a court

of appellate jurisdiction, called the court of appeals, composed of seven judges, who shall hold their office for fourteen years. The chief judge shall be appointed by the Governor, with the advice and consent of the Senate. The other six judges shall be elected by the electors of the State, and shall not be eligible to a second term. At the first election of judges, no elector shall vote for more than four persons as candidates for the office." I propose, sir, if these amendments now offered be not adopted—having settled, as I think, the principle that the chief judge is to be appointed—in electing the other six, and giving the term of fourteen years to all of them, instead of being embarrassed by electing a judge every second year, that we elect the whole six at one election, and that no elector shall vote for more than four of the six. The effect of this will be, that whichever party may be in control of the State at that election, the judges of the court of appeals will not be made up entirely of members of that party, but in that court there will be four of the dominant party and two of the party in the minority. These judges will be chosen by the same contest which will extend to the entire State. Each party will nominate four candidates; the majority ticket will be elected, and the two best, we are bound to suppose, on the minority ticket will also be elected, and therefore the court will always be composed of four judges of one party and two of another, together with the chief judge, who may belong to one or the other party, according as the Executive shall make the appointment originally. In the committee, when it was proposed that all the judges should be elected at one election, this plan was at first adopted. The principle, however, was afterward overruled, on a later vote of the committee, at one of its very last sittings. The question was discussed in the committee upon different occasions, and upon a final vote there was but one majority against this principle of minority representation. I believe, Mr. Chairman, that the present is the most favorable moment in the world for the adoption of this principle in this State. I believe that the result of the late election is such that all of us, to whatever party we may belong, must feel that this is an auspicious moment for us to make a Constitution. No one party can look forward with confidence to the immediate or continued control of these offices, and therefore we all have every inducement to make the best possible provisions with regard to this and every other matter, and leave the rest to take care of itself in the future. I hope, therefore, important as it is, that this highest tribunal of the State should not be composed of gentlemen of only one political party; and I am sure that we each agree that it should be so, if we would secure to that tribunal the confidence of the people. I hope that we will adopt a plan by which the court of appeals may not be exclusively given over to either political party. I much prefer myself to see both parties represented there on all occasions. Now, by this plan which I propose, as at the first election when six judges are to be chosen, no elector can vote for more than four, of course the court will be made up by four of one party and two of

the other. At future elections no such provision will be necessary. Whenever a vacancy shall occur, let it be filled for the entire term of fourteen years. Let every appointment be for the full term, as in the beginning, and whenever a vacancy shall occur—

Mr. BICKFORD—Why not make the term twelve years?

Mr. A. J. PARKER—My friend suggests twelve years. I prefer fourteen years if the officer is to be ineligible, as I think he should be, because if you should make him entirely independent he must be made ineligible. These six judges first chosen will be elected for the term of fourteen years, but they will not hold office for that term because of casualties that will occur by death and otherwise, which will make it necessary to fill many of their places, many more than will be desirable within the term of fourteen years.

Mr. GRAVES—If the term is fixed at fourteen years, will a faithful, honest and capable discharge of the duties of the office for that time disqualify a man for re-election?

Mr. A. J. PARKER—Most certainly not. No one knows that better than my friend from Herkimer [Mr. Graves], that that will not disqualify him, but something of a very different nature will disqualify him. He will have taken that place with the expectation of holding it but for one term; he will have made his calculations accordingly. He will have enjoyed during these fourteen years the confidence of all around him; he will have felt himself that he has been placed in a position entirely independent, where he has been not only enabled to act with reference to every question and every citizen without the slightest regard to securing that citizen's influence in a re-election, and also where he has been supposed to be above a suspicion of being so influenced; and in my judgment, it is quite as important that a judge should be removed from suspicion as that his mind should actually be free from such influence. I do not believe you can ever have an independent judiciary unless upon this principle. You must either give them the position for life or you must give it to them for one term, and place them beyond the reach of temptation and beyond the reach of suspicion by making them ineligible for re-election.

Mr. FERRY—I would like to ask the gentleman how he would arrange the termination of the terms of office if they expire from year to year?

Mr. A. J. PARKER—My friend mistakes my plan. They do not expire from year to year. The six judges are elected for fourteen years. The term of each of them expires at the distant day of fourteen years from his election, unless one resigns in the mean time, when his place is filled at the next election by a judge who is chosen also for fourteen years. If one dies, his place is filled also for the same term, and thus you soon get it arranged that all the judges are not to be elected at once. It is by no means to be supposed that when the term of these six judges expires, six other new judges are to be chosen. It is quite certain in the order of affairs and the casualties that attend human life, that not more than one or two will have to be chosen at the end of the

fourteen years. But I desire to say a word about the appointment of chief justice. I regret exceedingly that it has been said by gentlemen in argument here that the advocacy of the appointment of the chief judge implies a distrust of the ability of the people to select that officer. Certainly no such interference is warranted at all and it seems to me equally unjust for my friend from Lewis [Mr. E. A. Brown], to say that this appointment of a chief judge is a monarchical feature which we propose to introduce here. Monarchical, sir, for a Governor elected by the people to nominate and submit to the Senate for its approval or disapproval, a person to act as chief judge? Why, if that is monarchical, then we have a great deal to undo to make this a republican government, for it is equally monarchical for the Governor to appoint as he now does the superintendent of the bank department, the auditor, and a great many others of less note even down to notaries public. Is this indeed a monarchical feature? I never supposed it. The people elect their Governor for a short term and hold him responsible for his acts and appointments, and he acts simply as their agent, and if this, which we propose, is monarchical, why all the rest is monarchical, and we had better undo the whole. If indeed this is not a republican government we shall hardly be able to keep our Senators and Representatives in Congress under the severe scrutiny recently initiated in that body. But I think my friend can hardly be serious in saying that this is a monarchical feature, or that the advocacy of it implies a distrust of the people. Now by the appointment of this officer you gain this: you avoid what my friend and colleague [Mr. Harris] fears, a scramble for the office of presiding judge. You settle that question finally by having that officer selected by the Governor. These side judges selected by the people have equal power with the chief judge, but certain duties specially belonging to the chief judge will not devolve upon them. No one will have any reason or pretext to complain, for the judge appointed and the judges elected will each and all have been chosen with a perfect understanding of their respective duties, and it will not be possible that there can be either rivalry or bad feeling between them.

The question was then announced on that part of the amendment offered by Mr. Beckwith relating to the tenure of office.

Mr. SMITH—I would like to inquire whether the amendment suggested by the gentleman from Albany [Mr. A. J. Parker] has been received and entertained by the Chair.

The CHAIRMAN—It has not, there being two amendments already pending.

Mr. SMITH—I suppose, then, that if this amendment now pending should be voted down, it would make way for the amendment suggested by the gentleman from Albany.

The CHAIRMAN—It would do so.

Mr. SMITH—And that makes it in order to discuss that amendment now, with the view of voting on this question with reference to that.

The CHAIRMAN—Undoubtedly.

Mr. SMITH—If the pending amendment should

be adopted it would settle the question in regard to the amendment suggested by the gentleman from Albany [Mr. A. J. Parker], and hence it is important while voting upon this question, to do so understandingly. Those who are in favor of the amendment suggested will vote against this, with the view of substituting the other in its place.

Mr. WAKEMAN—I would like to inquire whether the amendment of the gentleman from Clinton [Mr. Beckwith] should be adopted, it would then be in order for the gentleman from Albany [Mr. A. J. Parker] to introduce his amendment?

The CHAIRMAN—Certainly. The amendment of the gentleman from Albany will be in order whenever the amendment of the gentleman from Clinton [Mr. Beckwith] is disposed of in any way.

Mr. WAKEMAN—So that a vote on this would not necessarily foreclose us on the other?

The CHAIRMAN—Not at all.

Mr. SMITH—I made the inquiry with the view of having the matter distinctly understood by the committee.

Mr. HALE—I do not propose to go over the ground again as regards the general question between a tenure of years and a tenure limited by age. But I wish to make one remark with reference to a few observations made by the gentleman from Herkimer [Mr. Graves], in vindication of that institution known as "Young America." I think, Mr. Chairman, that the gentleman must have misunderstood entirely the purport and effect of the majority report. He argued upon the supposition that we proposed to exclude young men from judicial positions. The fact, Mr. Chairman, is precisely the reverse. I think the gentleman must have understood that we require the age of seventy years in order to eligibility to the bench. On the contrary, we propose that the judges, when they reach that age, shall retire. The gentlemen who favor a term of years will see that, if some distinguished lawyer in this State should be elected at the age of sixty-five for a term of fourteen years, that would allow him to hold office until he was seventy-nine years of age. The report of the majority of the committee, which, it strikes me is quite as favorable to the gentleman's friend "Young America" as his own suggestions are, which would exclude him from the court when he reaches the age of seventy. Now, one word in regard to this feature. It has been suggested that, in practical effect, the term of fourteen years is, in most cases, more than a life tenure. And I would submit to the committee whether it is not the fact, and whether it is not a meritorious feature in our report, that upon reaching the age of seventy years, the judge must retire from the bench. It is true, Mr. Chairman, that in some instances, judges have preserved their faculties so as to be able to preside with dignity and ability, even after they had reached the age of seventy years: but it must be conceded that such cases are exceptions. It may be said that judges after they have reached the age of seventy years, if they find their faculties failing them, will resign before the expiration of their term. But it is very well known that there is nothing which old men are so slow to perceive as the decay of their own faculties. Those who

are familiar with the well known story of Gil Blas will recollect very well how poorly he fared, when in obedience to the behests of his patron, the Archbishop of Grenada, he suggested to him, after that distinguished functionary was somewhat advanced in life, that in consequence of old age, his mental powers were giving way, and that his sermons were not characterized by the same strength and impressiveness as before. We all recollect with what indignation the Archbishop received this suggestion from his faithful valet, and how poor Gil Blas was compelled to go out into the world and seek his fortune elsewhere because he had obeyed the mandate of his superior, given when that superior was in his prime and in the possession of all his faculties. Now, the outcry which is raised about this bugbear of life tenure, as if it were something terrible—something to be much more feared than any other tenure of office, is entirely without foundation. The provisions of this report as we all know, if they had been applied to the gentlemen who have been elected to the court of appeals since the adoption of our present Constitution would probably in almost all cases have limited their term of office to less than fourteen years.

Mr. SMITH—Will the gentleman allow me to ask him a question? As he is familiar with this matter, having been on the committee, and considered it in all its bearings, he will be able to answer satisfactorily. I understand the gentleman to state that under a system of life tenure the incumbency averages about fourteen years. Now, if that be so, why are not the gentleman and his friends willing to accept the term of fourteen years, when there is an acknowledged objection in the minds of the public against life tenure; why are they not willing to accept what they acknowledge to be the substance of their proposition, and dispense with the life tenure, inasmuch as the same object will be gained without encountering opposition?

Mr. HALE—I will answer the gentleman with great pleasure. In the first place, I will say that I am not very strenuous as to which of these two plans should be adopted. I consider the life tenure preferable, however, for the reason so well and clearly stated by the gentleman from Kings [Mr. Van Cott]; because although the term of fourteen years is generally equivalent to a life tenure, it is not always so; and if men who are taken from the lucrative practice of their profession, at the age of forty or earlier, and placed upon the bench, under a fourteen year tenure, there is an element of uncertainty which must necessarily, to a greater or less extent, distract their attention from the duties of their office. If they are made eligible for re-election, their minds must necessarily be exercised with reference to re-election, and if they are not, they will necessarily be occupied, to some extent, during the latter part of their term, in providing ways and means for going back to the practice of their profession, or into some other business, at the expiration of the term. For this reason I think a life tenure is preferable to one for fourteen years.

Mr. BECKWITH—If it be in order, I will accept the amendment proposed by the gentleman from Albany [Mr. A. J. Parker].

The CHAIRMAN—It is in order, and the question is now upon the adoption of the amendment proposed by the gentleman from Albany [Mr. A. J. Parker].

Mr. GRAVES—Is the proposition of the gentleman from Albany offered as a substitute for the proposition of the gentleman from Clinton [Mr. Beckwith], or is it an amendment to it?

The CHAIRMAN—The Chair is of opinion that it is offered as a substitute to take the place of the other.

A DELEGATE—I call for the reading of the amendment to the proposition of the gentleman from Albany [Mr. A. J. Parker].

The SECRETARY read the substitute offered by Mr. A. J. Parker.

Mr. McDONALD—I see that now for the third time in this Convention the theory of minority representation is again advanced. I supposed that that had been decided, if any thing had been, by this Convention. In addition to that, as I understand it, this proposition, with regard to the election of the judiciary, was strongly urged upon the committee by one or more of its members, and after a prolonged and laborious discussion was rejected by the majority of the committee. So that as against this proposition we have the authority of the Convention, as appears in several of its votes, and the authority of the Judiciary Committee who, as I understand, after having examined it laboriously and in detail, decided against it by a majority. It does seem to me that these decisions ought to be sufficient to satisfy the gentlemen who favor this plan, and to satisfy this Convention. But the only reason for which it is now urged is, to protect the judiciary against being influenced by political preferences. Now, that object is very desirable, and it is more easily accomplished by a more natural process; let the term of office be fourteen years, or even twelve years; let each judge go out every two years, and I will warrant the gentleman that he never will have in the court of appeals a bench wholly made up of members of any one party. It never has happened in this State that any one party has carried the popular elections for fourteen consecutive years, and unless that party ought to carry them, I am very sure that they never will do so in the future. Even with reference to our present court of appeals, with only eight judges, there has never happened an occasion, I believe, except at the first election, when all four belonging to the same political party were elected, and except for the last two years, Judge Denio going out and Judge Hunt coming in. Up to that time that court was always composed of members of both political parties, and we are all aware, especially the majority of this house, that if the term had been ten years instead of eight it would have been again reversed and a democrat, Judge Grover, would have taken his seat on the bench; so that the only object, on account of which the gentleman from Albany [Mr. A. J. Parker] urges the minority plan, is far better attained by the plan which has been already adopted in this State and found to operate well. I am therefore opposed to this minority representation plan for the reason I have stated that the object can be attained by this

other substitute which has already been tried unsuccessfully, and also for the other reason that the plan proposed by the gentleman from Albany would be wholly an experiment. As I understand it, it never has been tried in any country in any form or way; certainly not in this country; and I hardly think it would do, in this Convention, to press an experiment of this character into a Constitution which, if adopted, must last for twenty years. It is hardly safe to make such an experiment, especially when we remember that the Judiciary Committee, after a laborious examination of it, decided that it is not a good plan and ought not to be adopted. With regard to allowing the judges to be elected all together, at the same time, it seems to me there are great objections to it. If the court is to be composed of six or seven judges, elected at the one time, and holding office continuously, and all going out at the same time, I cannot see how the court can be expected to be consistent with itself; I cannot see how it can be expected that a new court will be bound by the authority of the former bench, especially if it be provided that none of the judges shall be re-elected. Upon that plan you will have an entirely new court after each election. But if you have a court in which the great majority of the judges are retained, and in which only one judge goes out, and one is elected every two years, you have a combination of the old with the new, which must greatly tend to harmony and consistency in the decisions of the court. I admit that when I heard the able argument of the gentleman from Kings [Mr. Van Cott], with regard to the advantages of his plan over the plan of tenure for a term of years, it seemed very conclusive, so far as the theory was concerned, but at the same time I remembered that the court of appeals, when it was first elected, under the present Constitution, was elected to last, one for two years, one for four years, one for six years, and one for eight years. I hardly think that the gentleman from Kings [Mr. Van Cott] will deny that the members of that court, when first elected, were as laborious and as attentive to business, and constituted in every respect as good a court as we have ever had since; so that, although the theory of the gentleman was good, it seems to me that experience has satisfied us that it is not a practical plan, or at least that it is not necessary, and that a judge elected for two years is just as good a judge, provided he has the same capacity, as he is when elected for eight years. I hardly think, indeed, that this question of time troubles the judges much; they are generally men of so much ability that when they go from the bench they are able to secure a much larger income as counselors if not as active lawyers.

Mr. CONGER—I regret, Mr. Chairman, to differ from the gentleman from Albany [Mr. A. J. Parker] who has introduced this proposition; yet I feel that I am called upon to regret it the less after the statement which he has so frankly made, that the plan he proposed had not met the approbation of the majority of the committee of which he is a member in undertaking to examine the proposition which he has so eloquently advocated, I am in a measure, tempted to represent those men

bers of the Committee on the Judiciary who are not present, and whose absence I feel called upon deeply to deplore. You know, Mr. Chairman, that they have the ability to discuss this subject, to state the views that have actuated them to their conclusions, and to give the whole matter a much more thorough and satisfactory explanation than I could possibly presume to do. Nevertheless, I will undertake to show, as I think I can conclusively, how poorly this scheme will work in practice, and how objectionable it is in theory. In the first place, my friend from Albany [Mr. A. J. Parker] proposes that in the election of these judges each elector of the State shall only have the privilege of voting for four; and he thinks that it is conceding largely, as far as the political balance of the court is concerned, that four only can be elected from one political party. Now, Mr. Chairman, the same situation of public affairs that would bring four judges from one party to the bench, would bring a Governor and Senate of the same political party into power, and would give them, of course, the privilege, under the first part of this proposition, of nominating a chief justice of their own political proclivities. In point of fact then, this plan would necessitate the organization of the court with five of one political party and two of the other. Now, sir, that is giving, on the plea of avoiding a political organization in our courts, too large a political preponderance, especially in your highest court of appellate jurisdiction. But, if some gentleman would say it would be easy to remedy this, and let the electors vote for three out of the seven, so that four would be of one political party and three of the other, observe the other dilemma in which you are placed. There would result simply this: that the nomination of these men by either of the political parties of the State would be equivalent to an election; and the election by the people, instead of being an exercise of their sovereign will and choice, would be a mere farce, merely the approbation and indorsement of the nominations of a convention. I have stated, I think fairly, the view which he has presented. I think he probably did not hear what I attempted to show would result of necessity, that the selection of the chief justice by the same party which brings four judges into power would really give that party five out of the seven judges. Now, I submit that this committee is hardly authorized, under the circumstances in which we are placed, to attempt a plan of election which would give to the political parties in the State the opportunity of making an election of the judiciary a test of political strength. It is the highest conception of our system, Mr. Chairman, as I have always understood and been taught to believe, that the object of the appointment of judges or of the selection of judges, is to prevent anything like a political element entering into the constitution of the court; for this court is not merely called upon to decide litigations between parties, but also to review the acts of the political majority, represented from time to time in the Legislature, and to determine what acts are in accordance with the Constitution and what not. To arrange your system, then, so that the party in power should have five out of the seven judges

to second their approbation of the doings of the political majority of the State would necessarily result in establishing a political tyranny of the Legislature, and the indorsement of its acts would be nothing more than a mere formal record of the edict of the men who have been appointed and elected on the same ticket with themselves. Now, it seems to me that these and other views must have actuated the majority of the committee in avoiding the carrying of their plan into an alternative fraught with such terrible evils. I hope the discussion will result in good, and that, by the same process which carried the majority of the Committee on the Judiciary to their conclusions, we will be carried back away from all these attempts to avoid the true responsibility which is before us, and that we will meet the issue squarely, either of appointing all the judges or of electing them all on one general principle, so that the court shall have but one mode of constitution; that it shall not present a divisive front in the manner in which it is constituted, part elected by the people and part appointed by the Governor. I do not suppose, Mr. Chairman, that the committee is prepared to-night, with so thin a house as its recent votes indicate, to reconsider the proposition which met its approval to-day. I feel, however, that when the Convention shall be full, and the majority of the committee be able to support the plan which they have presented in person, we will come to a very different conclusion, and that the proposition of my friend from Albany will receive a much more thorough and careful examination than I have been able to give it.

Mr. A. J. PARKER—I wish to say a few words in answer to the gentleman from Rockland [Mr. Conger]. So far as I have been able to understand him, he deprecates the giving of the control of the bench of the court of appeals to either political party. He thinks it would be exceedingly unfortunate if the Governor should happen to select a chief judge from the same political party with the four elected by the people, making five out of the seven of one political party elected by the dominant party; and this he considers to be a very great evil which he thinks might occur under this system.

Mr. CONGER—Will the gentleman allow me to explain, as I believe he was not listening to the remarks I enunciated in the first part of my statement? I say that starting, as he proposes, at a given time in the selection of the entire court, if he elects four by one political party, which is the dominant party at the time, and two by the other party, which is worsted in the political contest, he not only elects four judges of that party, but he elects the Governor and Senate at the same election; so that the Governor, Senate and four judges are all of one political stripe—if I may use so common a phrase. Now, when the Governor and Senate come to nominate the presiding judge, I think it follows, as a matter clear as the sunlight, that they will nominate a fifth man of the dominant party, and that makes five of the dominant party against two of the party that is in the minority.

Mr. A. J. PARKER—Precisely as I understood the gentleman before. That makes five of the

dominant party; and that is a very great evil, my friend says. How much greater is it if they have the whole? and that is the evil I propose to avoid. On his plan, the election of the whole, it is quite certain that they have the entire seven. On my plan it is possible that the dominant party may have five in the mode suggested, but that depends upon another question, viz.: whether the Governor shall be elected at the same time with the four judges or whether elected the previous year, when possibly he may have been of the other party, in which case the court will stand four to three. In the one case, the worst possible thing that can be conceived—and we admit that that is very bad state of things—is a court constituted of five of one party and two of the other; and in the other you can have, at the worst, only four to three; but under the system which he advocates there may be seven judges, all of one party, elected at one time. The gentleman alludes to what took place in the Judiciary Committee, which I claim to understand as well as the gentleman, who was not there—

Mr. CONGER—I beg the gentleman's pardon. I did not intend to say any thing of what occurred in the Judiciary Committee, except as I was authorized to do so by the gentleman's own statement.

Mr. A. J. PARKER—Very well. In regard to what took place in the Judiciary Committee I desire to say only this. That committee at first adopted the plan of minority representation, as I have proposed it here; they agreed that no matter what difference of opinion there might be as to the wisdom of adopting it for a political purpose, it would be wise to adopt it for a judicial purpose, and so they adopted it and retained it until their last meeting, when it was overruled by a single vote, the vote of a gentleman from New York—I allude to Judge Pierpont—who had been absent from most of the previous meetings. That is the way in which the proposition was treated in the committee. Now it is said by the gentleman from Ontario [Mr. McDonald] that this Convention has condemned the plan of minority representation. It is very true, sir, that it has voted against two propositions of that kind, relating to the choice of Senators, one made by the gentleman from Westchester [Mr. Greeley] and the other by myself; but from that I should by no means necessarily infer that it would vote against it as a plan of filling the judicial offices of the State. Now I propose that this system shall be adopted for a single election—not that it shall be carried out at every future election. There will be no necessity of it, from the nature of the election. We choose six judges in the first place; and it is entirely certain under the plan proposed, that they will stand politically, four and two. If those judges should all live, if none of them should resign, at the end of fourteen years you have to elect six more. But that is a state of things entirely improbable. Probably at the end of the fourteen years you will not have to elect more than two or three at the most. Changes take place in the mean time. Perhaps at the end of the first two years, one may resign. You fill his place for fourteen years at the next election. Perhaps four years hence another may die or resign. Fill his place for fourteen years at the

next election. Whenever a vacancy occurs, although filled temporarily by the Governor until the election, you then elect for fourteen years; so that all persons chosen under this provision will be persons to hold office for fourteen years, just the length of term given to the presiding judge. This proposition of mine, as to minority representation, stands as a separate proposition. I have incorporated it in this amendment or substitute; but I prefer that the vote should be taken upon it separately, and I shall myself, if no one else does, call for a division of the question, that we may first take a vote as to the number of judges, the term of office, ineligibility, and all being chosen at one election, and then upon the other proposition, as to whether an elector shall vote for the whole six or only for four. I understood the gentleman from Rockland [Mr. Conger] to allude to some contingencies that might occur, in which there might not be a struggle at the election, and in which each party might elect those nominated. If each party were to nominate three, and if no elector could vote for more than three, the three nominated upon each side would be chosen, just as in choosing the delegates at large to this Convention; a most unfortunate system, because it leads to no contest and no struggle at the polls. A nomination becomes an election. To avoid that—and I would avoid it most cautiously, for I should regard it as a great evil that a nomination should be equivalent to an election—instead of allowing each elector to vote for three, I allow each to vote for four. The consequence is, that of the six elected four will be from the dominant party and two from the minority ticket. There is a contest at once, just as earnest and just as effectual to bring out the votes as if each side were to vote for six. It is said that this is an experiment. It seems to me high time that the experiment was tried. It is an experiment. It is a novelty, at least in this State, I admit. But we all concede the desirability of making up this court of appeals, so that both political parties shall be represented. My friend deprecates the evil of having five. I deprecate the evil much more of having seven, of either political party. But if the court shall be made up of only two in the minority, and five in the majority, yet when that court shall pass upon a constitutional question, if all the judges agree, depend upon it that the judgment will command the confidence of the people and the confidence of the bar, just as much as if the minority had one more in that court. It would avoid the difficulty that must always exist unless you do provide for minority representation. I think you can avoid that evil by applying this principle to a single election. I think after that it will take care of itself. If, whenever there is a vacancy, filled temporarily by the Governor, the vacancy is filled by the election of a judge by the people for fourteen years, you never would have occasion, were the Constitution to continue in operation for a hundred years, unchanged in this respect, to elect six at once again. It would be sometimes one, and possibly sometimes two; and there will be no necessity of again resorting to the minority principle for the election of these judges.

Mr. CURTIS.—Will the gentleman allow me a question? I ask whether in that amendment, he has provided for the re-appointment or non-re-appointment of the chief justice.

Mr. A. J. PARKER.—There is nothing said about it in the proposition. I am willing to insert that also if desired.

Mr. CURTIS.—Should not the same rule prevail?

Mr. A. J. PARKER.—O, yes. I have no objection to it.

Mr. CONGER.—My learned friend from Albany [Mr. A. J. Parker] supposes that I had contemplated the plan of electing the seven judges on one ticket. Nothing was further from my thought, and I suppose that nothing was further removed from the plan of the Judiciary Committee. Yet I have no information and no intention and no right to speak for the committee. I only assume that so learned a body of distinguished men could hardly have thrown so crude an idea upon the Convention for its consideration. My object was to show that this dilemma, in which I believed we were placed, was the result of the vote, and the determination that the chief justice should be appointed by the Governor and the Senate. And I labored to show that the whole difficulty in regard to the election of these judges depended upon that. Suppose I were to suggest a plan of this kind: that all the seven judges should be elected by the people, and that no elector should be permitted to vote for more than four. You perceive that you have a court constituted with four upon one side and three upon the other; as near a political equality as you could possibly realize. I presume, however, that there are gentlemen here from the Judiciary Committee, that are able to explain its position upon the subject. I suppose that was the design and intention of the committee who recommended this plan of electing seven judges by the people.

Mr. BRÜCKWITH.—If so, would they not probably have stated it in their report, and made a provision of that kind? They have made no provision for minority representation.

Mr. CONGER.—That may be. But it is competent for the committee, and I trust I shall be indulged in the privilege, if no one else will undertake it, to move an amendment to the proposition of the gentleman from Albany, when the time shall come, by which we will virtually reconsider the proposition to have the chief justice appointed by the Governor, by and with the advice and consent of the Senate, and to have the court entirely elected by the people, so that no elector shall vote for more than four. Then there will be no more political preponderance than is absolutely necessary in the constitution of a court whose number is an odd number. I shall at the proper time, if such a proposition is not suggested from another source, move that as an amendment to the proposition of the gentleman from Albany.

Mr. A. J. PARKER.—I will modify this amendment by inserting at the end of the first sentence, the clause, "and shall be ineligible for a second term," which is now at the end of the third sentence; so that it may apply to the judge who is appointed as well as to those who are elected.

Mr. VAN COTT.—I do not rise to protract the discussion, but I desire to say a word. The proposition of the gentleman from Albany [Mr. A. J. Parker] I regard as a liberal concession and compromise with a view of harmonizing opinions on this floor. I have not heard any thing during this discussion, upon any of the topics that have been before the committee to-day, that was not thoroughly discussed by the Committee on the Judiciary. The plan reported by the committee was not any man's plan, but was the result of a compromise of the views of the members of the committee. I find here precisely the differences I found in the committee. I find here the same necessity that was found in the committee, to make concessions and to obtain a plan through compromise. Thinking that this is an approximation to what I regard as a sound judicial system, I am disposed to accept of it, waiving some extreme views that I entertain. A word with reference to the representation of minorities. At one time it was nearly the unanimous sentiment of the committee that that principle should be applied to the first election under the amended Constitution, if we have a new Constitution. Afterward opinions underwent some change, but I think, with this understanding, that in Convention we should probably get back to the original view. I think it would be a great misfortune to the State to constitute its highest court of judges selected from any one party. I see no way to obviate that danger, and to give the court the confidence of all parties, but some such arrangement as is proposed in this amendment. I, therefore, favor that as well as the other portion of the amendment.

Mr. VAN CAMPEN.—As most of those who have participated in this debate are lawyers, and I am not, I desire to say that I heartily indorse the sentiments expressed by the gentleman from Albany [Mr. A. J. Parker], and the gentleman from Kings [Mr. Van Cott]. For myself, I am a business man, but with large experience and observation; and perhaps no gentleman upon this floor has taken more interest in this discussion than I have. And I wish to say that nothing in my judgment will give greater satisfaction in reference to the judiciary system than the proposition of the gentleman from Albany, and therefore I shall heartily vote for it.

Mr. HALE.—I will suggest a division of this question, inasmuch as some gentlemen may not wish to vote for all the features of the amendment; that the principle of minority representation should be voted on alone, and also the principle of non-re-eligibility.

The CHAIRMAN.—The Chair will state that there are four distinct propositions in the amendment, and the vote will be taken on each separately; the tenure of office for fourteen years; the whole number of judges to hold for the whole term; non-re-eligibility; and minority representation.

The question was put upon each division as stated and they were severally declared carried.

The question recurred on the amendment offered by Mr. Smith, as amended.

Mr. BARKER.—If it should appear that there were any two of the candidates receiving an

equal number of votes, this amendment does not provide for that contingency.

Mr. A. J. PARKER—That is unnecessary. It is very improbable that it will ever occur.

Mr. RUMSEY moved the following amendment:

Insert after the words, "for fourteen years," the following: "The judges of the present court of appeals shall be judges of the court hereby created, and shall hold their offices until the expiration of the terms for which they were severally elected. The remaining judges of said court shall be so classified with reference to the present judges, that one of the judges of said court shall go out of office, and his place be filled by a new election, at the end of every second year."

Mr. RUMSEY—I offer that amendment for the purpose of testing the question here whether we shall retain in office the present members of the court of appeals. No gentleman, I apprehend, familiar with the practice in the courts, desires to see the present organization of the court entirely broken up, so that the whole court shall be composed of new judges only, who have not been familiar with the progress of its business. In addition to this, the gentleman from Kings [Mr. Van Cott] has well depicted the unfairness and manifest impropriety of turning out judges who have been withdrawn from their profession, who have thus far well and faithfully performed their duties, and who are thus to be entirely thrown, in the prime of life, out of business. We should at least leave them to finish their term of office, upon which some of them have scarcely entered.

Mr. HALE—I wish to call this gentleman's attention to the sixth section of the report, by which the present judges of the court of appeals are made to constitute a commission provided to decide the old cases in the court of appeals.

Mr. RUMSEY—I understand that; but I think it vastly more desirable to make that commission of new men, rather than to take those judges from their position and to place them in this somewhat inferior position. I do not propose to discuss this question any further than to refer to the remarks of my friend from Kings [Mr. Van Cott], which I think do more justice to the question than I can.

Mr. VERPLANCK moved that the committee rise, report progress, and ask leave to sit again. The question was put on the motion of Mr. Verplanck, and it was declared lost, by a vote of 35 to 39.

Mr. BECKWITH—I will suggest to the gentleman that by electing six judges, and electing one every two years, it will not come out right with a term of fourteen years.

Mr. MERRITT—If I understand the effect of the amendment, it will not interfere with the present members of the court, and they will be eligible for the office under the new Constitution. If we fully appreciate what they have done, we can elect them and start them on a course of fourteen years. Therefore the amendment is not necessary, and I do not see its pertinency.

Mr. WAKEMAN—Would not the adoption of the report of the committee make those judges

by the Constitution form the commission? If I understand the report, it provides that the present judges of the court of appeals shall compose that commission. Therefore we could not elect them as judges of the court of appeals proper.

Mr. MERRITT—That is not passed upon yet.

Mr. WAKEMAN—No; but it is contemplated. In my judgment the commission should not be made by the Constitution from the court of appeals. I think it is quite important that some of the judges of the court of appeals should continue judges.

Mr. MERRITT—The commission may be composed of those who fall of an election.

Mr. WAKEMAN—I should prefer, most certainly, if we can, to continue the present judges of the court of appeals. I believe them to be able and honest men, and I would put them in the new court if we can.

Mr. VERPLANCK—This is a new question presented to us and one which has not been considered; and as we have reporters here to take down all that is said, I thought it would be more creditable to the Convention, instead of sitting here to discuss the question, to adjourn, to enable members of the Convention then to talk it over. What is said here now will be mere talk, because gentlemen have not thought of the subject at all. I therefore renew my motion that the committee do now rise, report progress and ask leave to sit again.

The question was put upon the motion of Mr. Verplanck, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT *pro tem*, Mr. ALVORD, resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Judiciary, and had made some progress therein, but not having gone through therewith had instructed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was then put on granting leave, and it was declared carried.

On motion of Mr. HAND the Convention adjourned.

SATURDAY, November 23, 1867.

The Convention met pursuant to adjournment.

Prayer was offered by Rev. Mr. HECKMAN. The Journal of yesterday was read by the SECRETARY and approved.

Mr. GOULD—I ask leave of absence for Mr. Ferry after the close of this session until Friday morning next.

There being no objection, leave was granted.

Mr. FERRY—I ask leave to present a report from the Committee on Contingent Expenses, of which I have the honor to be the chairman.

The SECRETARY proceeded to read the report as follows:

The Committee on Contingent Expenses, to which was referred the petition of Mr. Reynolds, with the accompanying letter from F. W. Glen, Esq., an American citizen resident in Canada,

praying that copies of the proceedings of this Convention be furnished for the use of the members of the Canadian Parliament and Legislature of Ontario, respectfully report, that they have duly considered said petition and letter, and heartily approve of the tone of the latter, and of the object contemplated by the writer, to wit, increased concord and good will between the citizens of New York and the people of Canada. Hence your committee regret that, from the want of extra copies, they are unable to recommend the sending of a copy to each member of the aforesaid Parliament and Legislature, as suggested by the writer of said letter. Your committee are informed that, under the rules adopted by this body, fifty copies are to be provided for the use of the Assembly library; a number larger, in their opinion, than is absolutely necessary, and they therefore propose to take two copies therefrom, and appropriate the same to the kindly uses above suggested. For these reasons your committee recommend the adoption of the following resolution:

Resolved, That the Secretary of this Convention transmit to the Canadian Parliament and Legislature of Ontario, one copy each of the proceedings of this body; such copies to be taken from the number appropriated to the Assembly library, together with a copy of this report, with a certificate of its approval and a like certificate of the adoption of this resolution.

E. E. FERRY, *Chairman*.

Dated, November 23, 1867.

The question was then announced on the adoption of the resolution.

Mr. SEEVER—I move to amend the resolution, so as to include one copy of the annotated Constitution.

Mr. FERRY—I will accept the amendment.

The question was then put on adopting the resolution as amended, and it was declared adopted.

Mr. EDDY—I offer the following resolution:

The SECRETARY proceeded to read the resolution as follows:

Resolved, That on and after Tuesday next, the roll of this Convention shall be called at the opening of the session on each day, after reading the Journal, and all members absent without leave shall forfeit their pay for that day.

Mr. VERPLANCK rising to debate the resolution, it was laid over, under the rule.

Mr. HALE—I offer the following resolution and ask to have it referred to the Committee of the Whole:

Resolved, That the Committee of the Whole upon the subject of the judiciary be instructed to consider the expediency of substituting the following in the place of sections 6 and 8 of the report of the majority of the Judiciary Committee.

Sec. 6. There shall be a supreme court, having general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as may be prescribed by law. There shall be in the State twelve judges of said court. The existing division of the State into eight districts shall continue, subject to the power of the Legislature to change the same, as in this article provided. In the first judicial district there shall be

four, and in each of the other judicial districts two justices of the supreme court; and the Legislature may provide for additional justices, not exceeding one in each district.

Sec. 8. There shall be held each year, at such time and place as shall be by law provided, one State term of the supreme court for the hearing and determination of such causes as may be directed by law or ordered by any general term to be there heard. Seven of the judges of said court shall be, from time to time, as the Legislature may direct, assigned to hold such State term, four of whom shall constitute a quorum. General terms may be held by not less than three judges, or two judges and one justice of the supreme court; but no justice of said court shall sit at general term in the district in which he has been elected (or appointed). Provision shall be made by law for designating one of said judges as chief judge of said court, who shall preside at the State term, and for designating what judges and justices shall hold general terms, special terms, and circuit courts, and preside at courts of oyer and terminer; and, subject to the provisions of this article, any judge or justice of said court may hold circuit courts and special terms, preside at courts of oyer and terminer, or sit at general term in any county.

Which was referred to the Committee of the Whole.

The PRESIDENT submitted a communication from the deputy clerk of the common council of the city of New York, in response to a resolution adopted by the Convention, calling for copies of the report of the select committee of the common council, relative to the rights and franchises of said city.

Which was read by the SECRETARY, laid on the table, and ordered to be printed, under the rule.

Mr. WALES—I offer the following resolution and ask that it lie on the table.

The SECRETARY read the resolution, as follows:

Resolved, That the Committee on Revision be instructed to add the following to the fifth section of the article on suffrage, viz.:

"And no legal voter shall be prohibited from voting for any officer to be voted for in the district where such voter is entitled to vote."

Which was laid on the table.

Mr. GRAVES—I offer the following preamble and resolution.

The SECRETARY read the resolution, as follows:

WHEREAS, Bribery and corruption have been imputed to the Legislature until the public mind has almost ripened into the belief that the charges are true; and

WHEREAS, A careful examination into the conduct of the Legislature discloses the fact that in most instances the charges are untruthful and groundless, and that the corruption imputed to the Legislature is properly and truthfully to be charged to the lobby members or "slysters" who prowl about the Legislature for selfish and corrupting influences; therefore

Resolved, That it is the duty of the Legislature to pass a law making it a crime, punishable by

fine and imprisonment, for any person to receive, have in his possession, use, or offer to any member of either branch of the Legislature, any money, or other valuable property, to influence or control the vote of such member upon any question or law pending before either of said bodies; and any member of the Legislature who shall be approached by any person for the purposes aforesaid, who shall fail or neglect to make complaint against such offender, shall himself be guilty of a misdemeanor, and subject to fine and imprisonment, or both, in the discretion of the court.

Which was referred to the Committee on Official Corruption.

Mr. PROSSER—I offer the following resolution:

The SECRETARY read the resolution as follows:

Resolved, That the canal board be requested to report to the Convention, at the earliest day practicable, what is the capacity of the Erie canal to pass property eastward, and whether, in the opinion of the said board, any increase of capacity is necessary to accommodate the increasing trade of the Western States, and whether there is any danger of diversion of trade out of the State without any further improvement of said canal.

Which was laid over under the rule.

The Convention again resolved itself into Committee of the Whole upon the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Rumsey, to insert after the words "for fourteen years" the following:

The judges of the present court of appeals shall be judges of the court hereby created, and shall hold their offices until the expiration of the terms for which they were severally elected. The remaining judges of said court shall be so classified with reference to the present judges that one of the judges of said court shall go out of office and his place be filled by a new election at the end of every second year.

Mr. VAN COTT—It will be seen that this amendment virtually nullifies the action of the committee upon the amendment. I do not think it fair to the question that we should now proceed in committee to vote on this question or any other question involving fundamental principles of the judiciary system. The committee is very thin in point of numbers, and it is in the power of any gentleman to arrest the action of the committee by making the point that we have not a quorum. I do not wish to discuss the question. If gentlemen desire to discuss any of the provisions I will listen to them with great pleasure. But I think in the present state of the committee it is unfair to take votes. On this particular question, I may say I am very much opposed to this proposition for keeping in office the judges now in office. When the system prior to 1846 was banished we entirely reconstituted the bench. The incumbents in office were turned off; and we started under a new system fairly, and gave it a fair trial. I desire that the new system, whatever it may be, shall have the same fair trial. Elect a fresh body of judges, who

understand the new system and enter into its spirit, and who will desire it to succeed. Now, sir, it is very easy, if there are judges in office whom the people desire to retain, for them to re-elect them. If you continue them in office, and in addition to their present term, give them the fourteen years to which we must elect judges hereafter, it is not fair. But my chief objection to it is that which I have stated. I desire to commence the new system with a fresh body of justices elected under the Constitution, and enter upon the new system conscious that they are a part of the system, and come into official life under it.

Mr. BECKWITH—I do not like the amendment proposed by the gentleman from Steuben [Mr. Rumsey], for the reason that I think it would be better to adhere to the proposition that has been adopted. He proposes that the present judges shall remain a part of the court of appeals to be created by this Constitution. For my part, I would like to see a provision introduced into the Constitution allowing the present court of appeals to remain as a court for two or three years, to help dispose of the present calendar. If the present court, by a provision in the Constitution shall be permitted to exist for two or three years, they can dispose of the present calendar; but I prefer that a court and not a commission shall be adopted by us; then their decisions will be the decisions of a court, and not of a commission. Allow the judges to be elected for a new court, which will take the business on the present calendar, as it will be able to dispose of it during the two years, if you please, that the court shall remain in office.

Mr. GRAVES—How will the business now before the court be done, supposing the judges of the present court should be elected judges of the new court?

Mr. BECKWITH—I propose they shall not be elected judges of the new court; but shall remain as they now are for two or three years until the present calendar is disposed of. The new court should be elected entirely from the members of the profession. I think we can get men who have had experience enough in the supreme court, and in the court of appeals, to fill the offices of the new court that shall be created by this Constitution. Then you will have, it is true, two courts of appeals in operation for, say, two years. The present court will confine itself to the disposal of the present calendar; but they will not prevent the new court from aiding them in disposing of it as they shall have time. I do not like the term "commission," to designate the body to dispose of the present calendar. I prefer that of "court." Another objection I have to the course recommended by the gentleman from Steuben [Mr. Rumsey] is this: I do not believe you can induce men of the first standing in the profession to accept of the office of judge of the new court of appeals, with the uncertainty of his remaining in office more than two or three years, or, if you please, four years. The one who should draw the shortest term will be in office but a short time. His business will be broken up; his clients will have left him, and have employed other attorneys. He will therefore be un-

willing to take the office. Should you allow a man, if he is elected, to hold the office fourteen years he will not hesitate, if a proper salary be paid him, which I trust will be provided. Your best friend will not hesitate to accept of the nomination then. The lawyer of large business will be unwilling to accept office for two years, four years, or six years, and have his business broken up, with the uncertainty of his being re-elected.

Mr. SPENOER—I have a suggestion, which, it seems to me, will meet the views of both those who favor and those who oppose the amendment of my colleague from Steuben [Mr. Rumsey], and it is this: it seems to me that the principle which is embodied in the amendment is one that should be applied, as well to the judges of the supreme court and other judicial officers that may be authorized by the Constitution, as to the judges of the court of appeals. Therefore, I suggest that the consideration of this amendment be postponed until after we have gone through with the several courts and officers contemplated by the article, and that then we consider an amendment like this, which I now read, "All judges and judicial officers, whose terms shall not have expired when this article takes effect, shall hold their offices during the terms for which they were respectively elected, but their duties may be transferred to the courts established by this article." This will allow a transfer of the duties of the judges of the present court of appeals to the commissions which may be created by the article, if that proposition shall be adopted. And it will also secure the object aimed at by the amendment of my colleague. The proposition I have read will be found on page 132 of the Journal.

Mr. M. I. TOWNSEND—I do not believe that the people of this State, sent this Convention here for the purpose of turning out of office the members of the court of appeals, already elected to that body. I do not believe there is any dissatisfaction with these men; I do not believe there can be found in the State of New York, four more capable men, four men more acceptable to the legal profession and the public at large, than William B. Wright, Ward Hunt, John K. Porter and Martin Grover, who will be the judges on the first of January next. I speak not only of their capacity, but of their acceptability to the people of the State. Now, if we are well off, if we have good judges at the present time, what can be the necessity of running the risk of getting men certainly no better? I wish to say this, inasmuch as the suggestion has been made by the gentleman from Steuben [Mr. Rumsey], who has just taken his seat, that this arrangement ought to apply to all the courts in the State. Now, I wish to say one word in regard to the supreme court. I will not talk about the first judicial district at the present time, because I find the judiciary of the first judicial district to be pet grievances of many gentlemen in that locality. But I will say in regard to the seven districts outside the city of New York, that, in my opinion, in those seven districts the judiciary are equal in point of moral, intellectual and official standing to the judiciary of any State or any country on the face of the entire earth, and I say farther, that according to my appreciation, if we

remove the entire four judges in any one of these districts, it would be scarcely practicable to fill their places with four as good men. And I say this, sir, without any political partisanship. I say it after an experience of living in a judicial district where the political majority is against me, and where, with one exception, every judge upon the bench is a democrat. I say it because the system as it has worked has produced such results as we see. Perhaps I ought to add at the same time that there have been many elections for judges in my district when I thought at the time that there were other men equally as good as those who were successful, and when I should have been glad to see other candidates elected. It so happens that at least two gentlemen upon this floor received my vote, and in each case there was an election overruling my votes; but I speak of the system as a system working throughout the State. Now, if we have good men already in office, why turn them out simply for the purpose of running the risk as to whom we shall get in their places? I do not believe it is advisable. I know that under the Constitution of 1821, when we lived under a Constitution not so faulty upon that subject as some of us supposed the Constitution of 1846 to be, when we had a Constitution where a judge held office for life, where he was independent, that he could not be reached by popular influence, one very strong motive for calling the Convention of 1846 was to get rid of a man holding a judicial position that could not be got rid of otherwise; and at the proper time I want to commend to this Convention the beauty of having judicial masters. I know that in 1846 we had an officer upon the judicial bench of the State whom the people wanted to get rid of, and it could only be done by a change in the Constitution, because there was no lapse of time, except that which would take him from the stage of action, that would relieve the State of him. But outside of the first judicial district of the State (I do not speak of that district because I do not come from there, and I leave others to talk about it in this connection) I do not believe there is any desire to get rid of the judges who now hold office. If there be no such desire, certainly I am in favor of the proposition of the gentleman from Steuben [Mr. Rumsey], to leave the present judges in office, so that we may not interfere any more than is absolutely necessary with the course of judicial proceedings that have been going on for the last twenty years. Several gentlemen commend us to the beautiful state of things that we shall have if we resolve every thing into its original element, and undertake to make a new creation from chaos. The Almighty brought a very good creation out of chaos, but I think no power less than the Almighty can do so without great difficulties occurring; and even when a new creation was made out of chaos by the Almighty there was a woman brought upon the stage of action, who was so little experienced and knew so little how to act in her new position that, if you will pardon the expression, the devil was to pay with her in a very short time. Now, sir, I believe a little in the advantages of experience. I like experience where it produces good results, and

where the machinery works well. If our judges had so conducted themselves as to be distasteful to the people and unacceptable to the bar of the State, and to others interested in the business of the court, I might consent to the change, but unless for some such reason, I certainly would not consent to it. An allusion to the supreme court here is, perhaps, slightly out of place, because the question before the Convention is in regard to the court of appeals, and I think every gentleman here will concur with me in the assertion that the personality of the court of appeals, which will be in existence at the time this Constitution takes effect, if it ever takes effect, is entirely acceptable to the people of the State, and in this connection I desire to make another remark. I would not have the present causes in the court of appeals farmed out to any commission, whether that commission were created by the Legislature or by this Convention. I believe that the causes upon the present calendar of the court of appeals should be argued and considered and disposed of precisely as any other causes are to be argued, considered and disposed of. This court of appeals should have the power of sitting perpetually as a court; and if the Constitution shall confer upon this court the power of sitting perpetually, then the present calendar will be easily cleared away, and all future accumulations will be prevented from the fact that we will have in operation a power adequate to the transaction of the business. All that will be necessary to enable this court to transact the business will be to provide that a smaller number than the entire court—one-half the number or less—shall be competent to hear arguments and decide causes. Thus the judges who sit in the month of January will obtain as many causes as they can decide in the month of February, and will retire from the bench during that month, and another portion of the judges will succeed them on the bench and proceed with the cases on the calendar. Thus the session of the court will be perpetual, and the business will be disposed of. It is well said, that if we have two courts, there may be conflict in their decisions. Sir, we need not prescribe in what order the judges shall sit: we need not prescribe precisely the persons that shall sit in the court at one time; but only the number, and in that way all difficulties of that kind can be avoided. I would not have the present causes on the calendar put out to nurse to this commission, a body of men that we have not confidence enough in to keep upon the bench. I think it clearly follows that if the present judges are not men fit to be retained upon the bench, they are not fit to decide the causes now upon the calendar. Either the judges of that court are competent and fit to be retained as judges, or else they are not fit to sit as a commission; and if they are competent, they should not be constitutionally removed, and if they are unfit, they should not be permitted to dispose of the cases now before the court. For these reasons, I am in favor of the proposition of the gentleman from Steuben [Mr. Rumsey].

Mr. STRATTON—I do not rise to discuss the proposition now before the committee, but simply to ask my friend from Rensselaer [Mr. M. I.

Townsend], (because I did not care to interrupt him during his remarks), why he excepts the justices of the first judicial district, and if he knows of any reason why they should be excepted from the encomiums pronounced upon the judges of the other districts?

Mr. M. I. TOWNSEND—For myself, sir, I do not practice in the first judicial district, but from information that I have received, I believe that a majority of the judges of the supreme court in the first judicial district are as pure, as upright and as intelligent men as could be found in that district to sit upon the bench.

Mr. WAKEMAN—I like the suggestion of the gentleman from Steuben [Mr. Rumsey], followed up by the gentleman from Rensselaer [Mr. M. I. Townsend]. I think that the present causes on the court of appeals calendar should be disposed of by the court of appeals; and, in order to dispose of them there, there is a necessity for power to divide the court a sufficient length of time for the present calendar to be disposed of; and the question is whether or not, for a few years, the force of the court of appeals should not be increased from seven to nine judges, or some other such number. With only seven judges, supposing them all to be in health and all present, one branch of the court might consist of four judges, but in the other branch you could have only three; and I think it would be better to increase the number for a limited time. But, at all events, whether we have a commission or not, I would not have the present calendar entirely disposed of by the commission. I would have at least two of the present judges of the court of appeals sit with that commission, and I would have a portion of the commission sit with the court of appeals, so that they could have the experience of men who have already been some time on the bench. I am entirely opposed to the suggestion of the gentleman from Clinton [Mr. Beckwith], which would legislate by constitutional enactment the present court of appeals into this commission, rendering the judges ineligible for election to the court of appeals at the election which must follow the adoption of this Constitution. I very much deprecate the idea of doing any thing in this Convention by which the people of the State would be deprived of the power, in the re-organization of the court of appeals, to elect any of the four gentlemen now sitting on that bench. I regard them as men entirely satisfactory to the people of the State, and I have no doubt whatever that if any of them will accept a nomination from different parties, they will be put in nomination at the same time by both parties in this State. I know full well that they enjoy the confidence of the people; and as to the new member who has been elected this fall, Martin Grover, while I differ with him in his political views, I must here bear testimony to his integrity; and whatever may be said of Martin Grover, he is an independent judge and an able man, and will make his decisions, not because Mr. A or Mr. B represents either party litigant, but in accordance with what he considers to be the law, regardless of consequences. Desiring as I do, that the court of appeals shall be divided between the political parties of this State, I have

confidence in Martin Grover as a democratic judge of that court. Now I hope we shall adopt some system by which the present judges of the court of appeals shall be continued in office, or at least shall not be ineligibile under the new Constitution. Personal considerations aside, I think that it is very important that these public servants should be retained in view of the business to be disposed of, and in view of their experience and their knowledge of the current decisions that have been already made by that court, for it is of course desirable that the decisions should be as uniform as possible. Now I do not see why we may not, for a year or two, add to the number of judges of that court, so that they may divide the court into two branches and so dispose of the business on the calendar. Three judges might hold the general term of the court of appeals the same as they do in the supreme court. It would be a small number certainly, but I am not at all sure but what three judges of the court of appeals, who have had experience there, would really have more strength of judgment, and greater ability to dispose of business, than a commission composed of a larger number of inexperienced men. In this way we might dispense with this commission altogether. The court of appeals could divide until they had disposed of the accumulated business, after which they could unite in one body and proceed to transact the regular business of the court.

Mr. FULLER—I am in favor of the proposition of the gentleman from Steuben [Mr. Rumsey], but I would, perhaps, carry his amendment a little further than he does. I have been unable to see the force of the reasoning of the gentleman from Kings [Mr. Van Cott], who wants a brand-new court and judges throughout; a new system, and new agents to operate that system; and I think it has been one of the great faults of this Convention from the commencement, that it has manifested too much disposition to tear down every thing that is old in the fabric of our government, and to substitute for it something new. Why do we want a new court of appeals? Is there any necessity that we should tear down entirely this part of our judicial fabric and reconstruct it? Why not retain so much of the present court of appeals as experience has demonstrated to be good, and dispense only with that portion of it which has proved to be bad? It is proposed that we should have a court of appeals to be composed of seven instead of eight judges. The difficulties that are complained of in the present court are, that four of the judges are not sufficiently permanent in their tenure, and that their usefulness is thereby diminished. Now, in order to get rid of this fault, it is not at all necessary to construct a new court. All that we have to do is to place permanent judges in place of those four shifting, rotating judges. We shall then have seven judges in the court of appeals sitting permanently during the continuance of their term, instead of having four permanent and four transitory judges, as we now have, and in that way can we not gain all we should gain by the substitution of an entire new court for the old one? Shall we gain any thing by abolishing the old entirely and substituting the new in its place? It is con-

ceded on all hands that we have now in the court of appeals four as able judges as we shall be able to put in the new court. They have all the benefit of experience and are acquainted with the course of the decisions of the court, and they will be able to connect the old system with the new, so far as it will be new. But if we have an entirely new court, with brand-new judges, what will be the result? The result will be that we shall have an entire upturning not only of our present system, but also of our judicial decisions.

Mr. VAN COTT—Where does the gentleman get the idea of the disability of the present judges? They are all eligible for re-election. There is a provision in the report to that effect, and also a provision that vacancies may be filled by allowing such judges of the court, as please, to be candidates for seats in the new courts.

Mr. FULLER—That is one proposition, sir. Another proposition is to turn the present judges into this commission and to make them ineligible for election to the new court of appeals. If they are to be eligible to the new court, where is the necessity of electing them over again? They are already in office; they have proved themselves competent; they have the benefits of experience; and where is the necessity of turning them out of office and electing them over again? Why not continue them in the seats for which they have shown themselves so well qualified, and simply add three more judges to constitute a more efficient court? Then, sir, I am in favor of the amendment proposed by the gentleman from Steuben [Mr. Rumsey] for another reason. It has been objected here that you cannot get competent men to take places in the court of appeals, under that plan, for so short a time. I think there is no force in that objection. If you add three judges to the present court and continue the present judges in office, one of the present judges will vacate his seat at the end of two years, another at the end of four years, and another at the end of six years, and of the three new judges to be elected, the one who has the shortest term will serve at least eight years. I apprehend no difficulty of that kind. It is true that at the expiration of their present terms the present judges of the court of appeals will come up for re-election. That, instead of being an objection to the system, is in favor of it, in my judgment. We want a degree of permanence in the court of appeals, but we do not want a fossilized court. The proposition of the gentleman from Albany [Mr. A. J. Parker] that was adopted last evening would give seven judges continuing in office fourteen years, subject only to the contingencies of death or resignation. We might get rid of some of these judges within the term of fourteen years, or we might not. We might not be able to get rid of a single one of them during the whole term, or for at least seven, eight, ten or twelve years, and thus we would be in great danger of having a fossilized court. It might very well happen that, in the course of seven, eight or ten years, the course of public sentiment would change in many respects and that this court would fall behind of the people and the progress.

as has happened in the history of some courts of this country. I want a court which, while it has in it sufficient of the element of permanency, is, at the same time, a flexible court, which can easily be kept in accord with the spirit of the people and of the times. I do not want a court crusted over, promulgating the law and the ideas of the past, and which cannot be got rid of in any way but by the adoption of a new Constitution. Experience, I think, has shown that it is not so very easy a matter to get rid of these fossilized judges. The remarks of the gentleman from Rensselaer [Mr. M. I. Townsend] on this subject have considerable force. Now, if we classify the judges, so that one of them shall go out every two years, and a new one, or the same one, be elected to fill the place, we then have the means of renovating and regenerating the court, and keeping it in harmony with the spirit of the times. The gentleman from Albany [Mr. A. J. Parker] proposes to introduce the plan of minority representation; but the gentleman from Rockland [Mr. Oonger] has demonstrated very well that, upon that plan the court might be composed of five judges of one political party, and two of another; and yet this political party which selected these five judges might not be in the ascendancy again in the whole fourteen years, so that you would have five judges in the court of appeals opposed to the dominant party during that whole period, subject only to the contingencies of death or resignation; and under such circumstances you would find very few of the judges resigning, and I am afraid that, in that case, there would very few of them die during that time. [Laughter.] I think the principle of regenerating and renovating this court is a very important one, and if we extend the term to fourteen years, we will get sufficient permanency on the one hand, and, by a proper classification, a flexibility which is desirable on the other. And I am in favor of the proposition of the gentleman from Steuben [Mr. Rumsey] for this reason also. I think the proposition of the gentleman from Albany [Mr. A. J. Parker] was inadvertently adopted last evening. It is a great, a radical and a sweeping change. It is tearing every thing up by the roots, and creating something entirely new. Now, that is not what we are here for, to tear things up by the roots and substitute new things. We are sent here to improve, not to destroy. If our courts, as at present constituted, show defects, as they do, let us go to work and remedy those defects. As experience has shown defects in the present court of appeals, let us get rid of the defects, and let us also continue that court in existence. Are we to have our judicial fabric torn down and built up anew every twenty years as often as these Conventions are called? Are we to have no permanency in our judicial institutions? Are we not rather called here to remedy defects which experience has pointed out, than to pull down entirely the institutions in which they have been discovered? I hope the proposition of the gentleman from Steuben [Mr. Rumsey] will be adopted.

Mr. FERRY—Although the questions under consideration are not vital, it will be fortunate

if we shall decide them wisely. We want not only a good court, but one which will be acceptable to the people at large. We have now upon the bench of the court of appeals judges that we may say are generally quite acceptable to the people. I do not know that I can pronounce so feeling a eulogium upon them as the gentleman from Rensselaer [Mr. M. I. Townsend] indulged in, nor can I say that I think that they are entitled to translation without seeing death, any more than other men [Laughter]; but I think very well of them indeed. These men have gone through the struggle and responsibilities of a campaign, and have been elected judges. They have changed their business and accepted their present positions. I would like to do nothing to injure the interests or the feelings of these gentlemen, or their friends; and believing them, as I do, to be gentlemen who are perhaps as well fitted for the position as any that we could elect, I feel that if we can shape our legislation so as to continue them in office with profit to the State, we ought to do so. And as I have said, I would do so for their own sakes if it could be done with propriety; and I will add that I believe such a course would also be more acceptable to the people of the State, and by pursuing it we shall avoid exciting any hostility from any of the sources where we might apprehend it, if the present judges were to be displaced from office. I am not committed to any particular plan, but I think we ought to make some provision by which the present incumbents of this office may be allowed to retain their positions. The gentleman from Kings, [Mr. Van Cott] has argued in favor of having a new court composed of judges pledged to the new system, and if there were nothing in the way, it would be well to get the benefit of it: but really, after all, his argument is more specious than otherwise. If the men now in office were to be elected by force of, and under the new Constitution no one can for a moment suppose that any of them elevated to that position by the suffrages of the people of the State at large would feel any less obligated to act up to the spirit of the new Constitution, than new men would. In regard to the other branch of the amendment, I have more doubts about. I have no fear of a fossilized court. I have no fear that a court composed of such able and eminent men as I have reason to believe it would be composed of, would become fossilized, and I believe we would be perfectly safe in giving them a life tenure or a term of fourteen years, rendering them ineligible to re-election, so as to place them even beyond the suspicion of trying to secure re-election.

The question was announced on the amendment offered by Mr. Rumsey.

Mr. BECKWITH—I call for a division of the question.

The SECRETARY read the first part of the amendment offered by Mr. Rumsey.

Mr. SILVESTER—I am opposed to the amendment of the gentleman from Steuben [Mr. Rumsey]. As a general rule, I am in favor of retaining judicial officers in office so long as they discharge their duties with general acceptance to the people and with credit to themselves; and I shall

be in favor, when we come to the consideration of the supreme court, of making provisions for retaining the incumbents of judicial positions in the supreme court until the expiration of their terms of office. But we are here creating a new system, and I think it is eminently proper that, in commencing a new court, in order to see whether the system which we inaugurate is a good one, and one which will facilitate the transaction of the business of the people, we should commence afresh. The present court of appeals is overburdened with business to such an extent that it has amounted of late to a virtual denial of justice to suitors to carry a case to that court, and that fact, in my opinion, has had as much as any other question to do with the calling of this Convention. We are now endeavoring to remedy this defect, and to so organize the new court that the business which devolves upon it may be discharged promptly and acceptably to the people. We propose no slight to the present court of appeals in constituting this new court. The report of the committee, as I understand it, provides for the continuance in office of the present judges of the court of appeals, merely changing the name of the tribunal in which they act; and if that is any objection, the proposed name might be altered, and they might still continue as a court of appeals. In order that the new system may have a fair trial, and that the new court may only have cognizance of the causes brought to it under this new system, it seems to me that the causes now on the calendar of the court of appeals, or which shall be there on the 1st of January, 1868, should be disposed of by the judges now upon the court of appeals bench, either under the name of a commission, or, if that is objectionable, under the name of a court of appeals; in order that the new system may have a fair trial, and in order that we may be able to see whether it is an improvement upon the old, I think it is eminently proper that this course should be taken. The objection that I have to the amendment of the gentleman from Steuben [Mr. Rumsey] is that it would interfere entirely with the system proposed by the Judiciary Committee, and with the section which was adopted by this Convention last evening. By a very large vote this Convention adopted last evening the section proposed by the gentleman from Albany [Mr. A. J. Parker], which provides for minority representation in the court of appeals; and, in order that an opportunity may be afforded for the accomplishment of the object proposed by that section, it is necessary that, at the first election of the judges for the court of appeals, all of the judges shall be chosen for the term of fourteen years; but if we adopt the amendment of the gentleman from Steuben [Mr. Rumsey], it will entirely overthrow and annul the section adopted by us last evening. Now, this report does not at all prohibit the present judges of the court of appeals from being candidates for positions in the new court of appeals. They can all be nominated and elected, and the only effect would be that it would be necessary to supply the vacancies in the commission that would occur by their election as members of the new court. I hope the committee will not adopt the amendment which the gentleman from Steuben has offered.

Mr. LUDINGTON—I rise, sir, to add my approval to the amendment of the gentleman from Steuben [Mr. Rumsey], for the reason that I consider it not only entirely practicable, but eminently just. The Constitution under which we have lived since 1846 contemplated that the experience of the people of the State in the period of twenty years would develop the necessity for some revision or improvement in our fundamental law, and under its provisions for that purpose we are assembled. Its authors, however, did not contemplate that the people would find it necessary, after the expiration of that period, to attempt to improve the character or ability of the officers chosen to fill the different departments of government, but that the new and untried systems adopted, under which these officers are elected to these departments of government are worked might prove faulty and need changing. Sir, I am not aware that the experience of the people has satisfied them that there is any want of capacity or integrity found under the present system, in any of the officers of the State. I do not believe that we are called here by the people for the purpose of making or attempting to make any improvement in this respect. This we could not do if we would, for the present officers of our judiciary are of the first capacity; but I think we can greatly improve the system under which our courts are worked, so as to give greater facility for the discharge of the business before them, and the ends of justice be more easily and surely obtained. Now, as has just been remarked by honorable gentlemen here, our people complain of delays, and one of the principal causes of complaint is found in the necessary want of some additional force or facilities in the present court of appeals for the purpose of clearing their calendar, disposing of the business before that court, and for preventing future delays; but that difficulty does not arise from any want of capacity or industry on the part of the officers who compose that court, and therefore I do not perceive why it is necessary that the present incumbents of the court of appeals, who have been elected by the people of the State, should be removed by any act of this Convention that others may take their places. Sir, I do not believe that, if the people should cast about through this entire State, they would find officers better qualified to discharge the duties of that court than the present incumbents; neither, and more especially, do I believe that the people, having so recently elected a judge of the court of appeals by so decisive and overwhelming a vote, are now calling upon us to make a change by which that judge—I refer to the Hon. Martin Grover—shall be at once removed from his place, and the people required to choose some other person in his stead. The same remark may be made in regard to the Hon. William B. Wright, John K. Porter and Ward Hunt. Those gentlemen were elected by overwhelming majorities. They were selected because of their known experience, learning and efficiency as judicial officers, and I do not believe that the people would be satisfied with our action if we should inaugurate any system or plan by which they would be removed from the positions which they now, and so acceptably, occupy. Re-

sides, I should consider it eminently unjust to these judges personally who have faithfully discharged the important duties imposed upon them, to abruptly dismiss them from the public service, and send them unprepared into retirement. Now, what would be the practical effect of a rule by which all these officers should be removed, and the people should be called upon to elect others in their stead? The people deprived of their great experience, learning and familiarity with the duties pertaining to their positions, and they thrown out of employment, and forced to find support in their profession or in trade, contrary to their previous arrangements and expectations. If we had the legal power, I think it is questionable whether we have the moral right to unelect or oust these officers from their present positions by our action here. At all events, I regard it as a dangerous experiment to embody such a feature in the Constitution. I regard it as hazarding the adoption of the Constitution itself when submitted to the people for their acceptance: and it is more particularly for these reasons that I shall favor the amendment of the gentleman from Steuben [Mr. Rumsey]. It is well known that in many of the judicial districts of this State the people have recently, by very decided majorities, elected justices of the supreme court for the term of eight years; but, under the proposition suggested by some members of this body, I suppose those justices elect must all be removed and new ones be elected to fill their places. Is it supposed that any better, more experienced or more competent men would be found? I am astonished that any proposition so unfair, unnecessary and uncalled for by the people should be seriously urged by any honorable member upon this floor. Sir, I dare not support a measure so fraught with injustice and popular weakness. No such changes are necessary in order to make any needed change in our judicial system. The present judges can all fill out their respective terms, and the judges elected under the new organization can continue the work of judicial action and labor without any clashing or friction of the machinery, without disappointment to the people or those whom they have chosen or may choose to administer the law in our courts. Intending only to keep within such reforms as the people demand in their organic law, and not to make unnecessary and dangerous innovations upon the sanctity of the recorded and approved will of the people, shall be my aim. I shall, therefore, cheerfully vote for the amendment before the committee.

Mr. HALE—It seems to have been supposed by the gentlemen who here advocated the amendment proposed by the gentleman from Steuben [Mr. Rumsey], that the majority of the Judiciary Committee have been actuated by some feeling of distrust or dislike of the present judges of the court of appeals. I wish to point out to the committee the fact that under the system adopted by this committee, last evening, on the motion of the gentleman from Albany [Mr. A. J. Parker], the judges who are now upon the bench of the court of appeals will have a longer tenure of office taken as a whole than they will if this amendment of the gentleman from Steuben [Mr. Rumsey]

is adopted; and the other fact, that if the minorities pronounced upon these judges are correct—and I certainly indorse them most heartily—it is in the power of the people under the amendment adopted last evening to secure their service to the State, with more certainty than they could under the amendment offered by the gentleman from Steuben [Mr. Rumsey]. Let us look at that court as now constituted, or as it will be constituted after the first of January, will consist of three judges nominated by the republican party and one judge nominated by the democratic party. These judges are all eligible to the new court of appeals; my friend from Monroe, to the contrary notwithstanding. The term of one of these republican judges will expire two years from next January. Under the amendment as adopted by this committee, any two judges who are nominated by either party, whether in the majority or minority, unless they are so objectionable as to excite hostility to the action of the nominating convention among the people, are sure of an election. Now let us suppose that at the first election under this Constitution, if it shall be adopted, the republican convention should nominate Judge Porter, and Judge Hunt (the two republican judges who have the longest time to serve), with two other unobjectionable men, for re-election. Suppose that the democratic party nominate Judge Grover, as one of their candidates. There will be three names upon the republican ticket and one upon the democratic ticket, men who, as has been said upon the floor, are entirely unobjectionable, who have to recommend them, the experience which they have had in the court of appeals, and who are morally certain of the election for four or five years, under this system. By the operation of the succeeding provisions of this article, Judge Wright is put in this commission, or if you please to call it so, the "court of appeals," for finishing the old business, by which he has a term of three years, in an office precisely the same in its duties and importance to the people as the one he now holds, instead of two years which he would have under this amendment of the gentleman from Steuben [Mr. Rumsey]. Now can gentlemen explain to me how these men are to be injured? How any injustice is to be done them, or how the people of the State, if they desire to continue them in office, as I have no doubt they will, are to be deprived of the power to do so, by the amendment adopted last evening, taken in connection with the other sections of this report?

Mr. LUDINGTON—Will the gentleman permit a question?

Mr. HALE—Certainly.

Mr. LUDINGTON—Suppose that influences should prevail in the respective nominating conventions by which the present incumbents should be prevented from being renominated, then what would be their position?

Mr. HALE—Their position would be this: the people would not submit to the action of the nominating conventions which should ignore the qualifications of those men. There is no law compelling the people to abide by the action of the nominating conventions, and the advantage of the system proposed by the gentleman from Albany [Mr. A. J. Parker] is, that if these conventions forget

their duty, or refuse to do it, the people have in their power, by "bolting" the nominations, to secure the election of the men whom they think best entitled to the position and best fitted to discharge their duties. Nominating conventions are not omnipotent. And a strong reason against abrogating the system proposed by the gentleman from Albany [Mr. A. J. Parker] is that if it is adopted no nominating conventions will dare to make unfit nominations or to neglect or refuse to give the nominations to men who, by all considerations of the welfare of the State and their own experience and ability, are entitled to them. Each convention would, of course nominate four men if this system should prevail, and no nominating convention would dare to put upon that ticket any man against whom popular dislike or distrust would exist, or who were not, by their position, entitled to command, and did not command, the respect of the people of the State. Now, Mr. Chairman, we are not without precedent in this matter. There have been two Constitutional Conventions before this, the work of which has been adopted by the people. In each of those State Conventions—in the Convention of 1821 and in the Convention of 1846, new judicial systems were adopted. Did the members of those Conventions, or did the people who adopted their work, think it was necessary that in the adoption of the new systems, the inauguration of such systems should be embarrassed by action taken in favor of individuals who were incumbents in office? The old supreme court was one of supereminent ability, one whose decisions are now read and cited as authority throughout all this country; but still the Convention of 1821, by adopting the new system, put them all out of office; and that was ratified by the people. So it was with the Convention of 1846—there were men upon the bench whom the whole State knew to be eminently qualified for the position which they held. Did that Convention deem it necessary to embarrass the inauguration of the new system in order to preserve the rights or privileges of individuals in office? Certainly not. And so with us. If we are going to retain the old system, there is nothing whatever to call for any provision which would put the present incumbents out of office. There is no one who has a greater respect for the present judges of the court of appeals than I have; and I think there is not a man upon the Judiciary Committee who does not entertain the same views in regard to them; but we think that they would not ask—we think that they ought not to ask, if we put a new system before the people—that it should be embarrassed by compelling the people to retain in office those who now occupy those seats, chosen under another system. We give the people the power to put them there again. We not only give the people that power, but by this system which was adopted in the committee last evening, if it should prevail, we give each political party, as I have explained, full power to retain all these gentlemen in office, and to secure to the State the continued benefits of their services. And I cannot see that there has been any thing pointed out by any members who have spoken in this debate to show that

any injustice or injury will be done either to the people of the State, or to the persons who now occupy the position of judge of the court of appeals, by the adoption of the amendment which has already prevailed in this committee.

Mr. SILVESTER—I agree entirely with the gentleman from Sullivan [Mr. Ludington] in the encomiums which he has pronounced upon the members of the present court of appeals. They are all gentlemen who have discharged their duties with the greatest acceptance to the people of the State, and with the most eminent ability; and if there has been any failure in the dispatch of business in that court with rapidity, it is not at all the fault of the judges themselves, but it is entirely the fault of the system of which they are a part. And I repeat, sir, that in the inauguration of a new system, I consider that is exhibiting no want of courtesy to them, if we provide as the report of the Judiciary Committee provides, for continuing them in office for the transaction of business which they had been elected by the people of the State to transact—to decide, and determine those causes which are now in the present court of appeals, leaving it for the new court of appeals, newly constituted, to decide the new cases which may hereafter be brought before them. It seems to me that there is no force in the objection urged by the gentleman from Sullivan [Mr. Ludington].

Mr. LUDINGTON—Suppose they finish up the business before the present court of appeals long before the expiration of their terms. What then?

Mr. SILVESTER—They are perfectly eligible to re-election in the new court of appeals, and if they finish the whole of the present calendar before their terms expire, they will be able to enjoy that merited repose which their labors have acquired for them. It is no want of courtesy at all, sir, to the present court of appeals—and I would be the last gentleman in this Convention who would detract one iota from the distinguished merit and ability of the judges who compose that court. But the inaugurating of a new system contemplating a different mode of appointment and election requires a re-organization of the court, and this in my opinion justifies the amendment which we have adopted.

Mr. SMITH—The gentleman from Rensselaer, [Mr. M. J. Townsend], in his remarks a few moments since, stated that our business here was not to legislate men out of office. I would like to inquire of him if our business is, on the other hand, to legislate men into office, or to keep them in office? It seems to me that this whole discussion in regard to our present judges, their competency, their character, and the propriety of retaining them in office, has but little to do with the question under consideration. They were elected under our present Constitution, and I do not understand that they have any vested rights which prevent the people of the State of New York from making a new Constitution. There is no valid reason, that I can perceive, why a Constitution may not be made and adopted, notwithstanding it might cut short their present term of office. If the people see fit to elect them to office under the new Constitution they have a right to

do so, and will do so, doubtless, if they are the most suitable men. If, on the contrary, after having adopted a new Constitution, the people choose to elect other men they have that right, and ought to have that right. Our business here is to frame a new Constitution, or revise the old one, and submit it to the people for their approval. Whether we retain the old provisions or substitute new ones, the people will have to pass upon the whole as submitted; and if adopted, it will be a new Constitution. The old Constitution will expire with the adoption of the new, and all its offices will die with it. Why should we busy ourselves here in discussing the officers under our present Constitution, and whether they ought or ought not to be retained in office, or be re-elected under a new Constitution? I confess, I do not see the propriety of it. Our business here is to try to make the best Constitution we can, and leave the question of who shall hold office under it to be determined by the people.

Mr. LUDINGTON—Is it our business to turn all the men out of office that the people of the State have very emphatically put into office?

Mr. SMITH—The people of the State have elected the present incumbents to office under the present Constitution, they hold their offices under that Constitution, and with it they must stand or fall. The people have entered into no contract with their officers by which they are entitled to continue in office until the close of their terms, to the prejudice of the right of the people to make a new Constitution. If the present Constitution shall continue in existence they will hold their offices through the terms for which they were elected, if not guilty of malversation; but the people have the right to change their organic law, and when they do change it the officers under that law fall with it.

Mr. McDONALD—Does the gentleman think it desirable for the people to turn men out of office when they have those who suit them in office?

Mr. SMITH—If the question, Mr. Chairman, were put to me as to the propriety of re-electing a man under our present Constitution, or of electing to office under the new Constitution a person who had served under the old, I would answer that it would depend on circumstances. It would depend upon the character of the man, his fitness for the office, and the manner in which he had discharged his duty. But the question put by the gentleman does not arise here; we have nothing to do with it. We are not here to make or unmake officers. We are not here to promote the interests of political parties. We are here to make an organic law for the whole people, for all parties, and for the next twenty years, if the people adopt it.

Mr. McDONALD—As a question of principle, does the gentleman believe it is advisable, either by constitutional means or any other, to turn men out of office when they have suitable men in office? It is a question of principle.

Mr. SMITH—That, Mr. Chairman, is not a question of principle at all; it is a question of policy.

Mr. McDONALD—As a question of policy, how would the gentleman answer it?

Mr. HALE—I would like to ask the gentleman

from Ontario [Mr. McDonald], whether he deems it advisable to omit to improve our judicial system, if it can be improved, because in so doing we may put some men out of office?

Mr. McDONALD—I do not claim that it is advisable to keep men in office when it will be any injury to the present Constitution; but I do claim that when it will be no injury we ought to continue the present officers; and until they show there is an injury I claim that the present officers ought to be continued. We are sent here not to uproot every thing, but simply to remedy defects.

Mr. LUDINGTON—With the permission of the gentleman from Fulton—

The CHAIRMAN—The gentleman from Fulton [Mr. Smith] has the floor. The debate must proceed in order.

Mr. SMITH—We are sent here for one specific object, for one purpose, and that is to frame an organic law for the people of this State, and not to consider whether A, B or C may, by our action, be thrust out of office, or whether an opportunity will be afforded for D, E or F to be elected to office under the new Constitution. We ought to keep all these considerations in abeyance, and hold ourselves to the strict business of making the best Constitution in our power. The moment we depart from that rule, we shall be at sea without chart or compass. We shall not be able to frame an instrument that we shall respect ourselves or that any body else will respect. Now, I have no doubt that the judges of the court of appeals are very excellent men, very worthy; but that is not the question for us to consider. While on my feet, I desire to express my surprise at the eulgium pronounced upon our present judicial system by the gentleman from Kennesaw [Mr. M. I. Townsend], and also by the gentleman from Herkimer [Mr. Graves], who appeared last evening in the usual role of "Young America"—that is, unusual for him. If I understand the wants and wishes of the people, there is no question connected with our labors in which they feel so much interest as in the framing of a new and good judiciary system. There was no one thing that more urgently required change, or that had more influence in calling this Convention to frame a new Constitution, than the acknowledged defects in our present judiciary system. There is no doubt upon this point in my mind. The gentleman referred to the condition of Paradise, likening, I suppose, the present system to Paradise, making it a sort of judicial paradise, and stated that in the Garden of Eden "the devil was to pay." Now, it occurred to me as the gentleman made this remark, and I compared our present judicial system with some other systems that we have had, and systems that exist in other States, that the case of Paradise is not the only one where the devil has been to pay. "The devil was to pay" somewhat extensively and ruinously when our present system was foisted upon the people. It has lowered the judiciary in public estimation, and brought our reports into contempt among the States of the Union and across the water.

Mr. M. I. TOWNSEND—I want to ask my

friend from Fulton [Mr. Smith] one question, seriously, if he will answer it. I want to ask him what States' reports stand as high as the New York reports among the people of this country?

Mr. SMITH—If the gentleman had asked me what State reports do not stand higher, I could have answered the question more readily.

Mr. M. I. TOWNSEND—I will ask that if the gentleman prefers.

Mr. SMITH—I do not know of any. I am aware that the reports of the State of New York, under our former system, did stand high. There was no State, probably, in the Union whose reports stood higher than those of the State of New York, both in this country and in England. But under our present system the reports of the supreme court are in bad repute. I desire to make a distinction between the supreme court and the court of appeals. The reports of the latter stand higher.

Mr. M. I. TOWNSEND—You have got them down low enough.

Mr. SMITH—So far as the reports of the supreme court are concerned, they are not held in high respect, I am sorry to say; and I do not think they deserve to be. Every lawyer knows that you may take any question you please, and furnish a brief on either side, well fortified by authority, from the reports of the supreme court. This does not arise from the incompetency of our judges, for we have men of marked ability—very able jurists upon the bench—but it arises from the fact that we have eight distinct supreme courts, uttering separate, distinct, and conflicting decisions upon the same and all kinds of questions that come before them. Under such a state of things it is utterly impossible for any lawyer, or suitor, to know what the law is upon any question until he gets a decision from the court of appeals. And even the decisions of the court of appeals do not command the respect that the decisions of the court of last resort in the Empire State ought to command, and would command, if the court were differently organized. Mr. Chairman, I did not intend when I arose, to enter into this discussion, in regard to the merits of our judicial system, or the character of our reports, but have been seduced somewhat from my purpose by the questions put to me. But while up, and on this subject, I will state, for the information of the committee, certain facts in regard to the number of our reports. From the year 1794 down to 1846, when our present Constitution was adopted, all our reports, both law and equity, amounted to only 115 volumes, in a period of fifty-two years. Since the adoption of our present Constitution to the present time, covering a period of twenty years, we have 178 volumes. Prior to 1846 there was an average issue of two volumes and a fraction a year; and since the adoption of the present Constitution there has been issued an average of eight and a fraction volumes a year.

Mr. BARKER—Are the reports of the supreme court authorized by any law of the State, or are they the individual enterprise of a gentleman living in Saratoga county, in connection with the publishers and booksellers of this State?

Mr. SMITH—I do not know how that may be. I know the fact to my sorrow that these reports come out very frequently, and by their conflict produce a sad state of doubt, uncertainty and confusion.

Mr. BARKER—I would then state for the information of the gentleman and the Convention, that the supreme court reports are not authorized by any law. They are the commendable enterprise of an individual reporter in connection with book-sellers. If the gentleman will permit me to occupy his time one moment more, I would make the suggestion that the embarrassment which he speaks of, is incident to the mode of organizing the supreme court, being in departments, and not a court of final jurisdiction. There will be errors and conflict of opinion where there is more than one tribunal that must dispose of litigation. The superior court of the city of New York has a constitutional existence, and it makes its decisions according to its judgment. There is also the superior court of the city of Buffalo, a tribunal equal in dignity and intelligence to the supreme court of the State. There will be conflict and not uniformity where there is more than one court. It is only in the court of final jurisdiction that uniformity will prevail; and, in my judgment, there is no great embarrassment to the profession, but rather much benefit, in having the opinions of the inferior courts reported.

Mr. SMITH—Whatever the fact may be in regard to the issuing of these reports, whether authorized or unauthorized by any law, it will not be denied that we have eight distinct supreme courts which are organized under our present Constitution, and authorized to review their own decisions. Suitors sometimes think, and the lawyers too, that their cases are log-rolled through the general term; but I do not know that such a practice obtains, and would not make the charge. They ought to be so organized that such a suspicion could not arise. But these courts sit in review of their own decisions, and promulgate opinions on all sides, of all questions that come before them. I admit, with the gentleman from Chautauqua [Mr. Barker], that there is a necessity of having a court of final resort; that shall be a fixed and permanent court; that shall command the respect of the people; that shall embody intelligence, honesty and integrity; whose decisions shall be regarded as law and be respected as such by every body.

Mr. M. I. TOWNSEND—Will the gentleman allow me to ask, upon the matter of uniformity of decisions, would he have the present fifteen hundred causes in the court of appeals decided by one tribunal, while another court of appeals is making another set of decisions?

Mr. SMITH—The gentleman has asked a question which calls for an opinion upon another matter embraced in this report. I have not discussed it, but have no objection, in this miscellaneous discussion, to answer the gentleman and express my opinion on that matter. I believe the accumulation of business in the court of appeals which exists at present, and which has been so oppressive as to prevent the obtaining of justice by the people, has arisen from a defective organization of inferior courts, and the rotating system in the

organization of the court of appeals. As the courts are now organized, no lawyer can advise his clients to rest under the decision of the general term, where that decision is in conflict with his well settled convictions of law. The fact that the judges sit in review of their own decisions, the suspicion—whether true or false—that cases are sometimes log-rolled through, and the conflict between the several supreme courts of co-ordinate jurisdiction, all tend to bring general term decisions into disrepute, and deprive them of the authority which the decisions of the supreme court of the State of New York ought to possess. The result is that too large a proportion of the cases which go from the circuit and special terms to the general terms, are moved on to the court of appeals. Now, in my judgment, if we had a general term of the supreme court that commanded the confidence of the people and the profession, there would not be more than one appeal to the court of appeals where there are now ten. A court of appeals, properly organized, with seven judges, sitting on from year to year, would be able to do all the business of the State, and keep the calendar clear, without the aid of a commission to be called into existence every ten years, to clear off an accumulation of business which the judges themselves ought to have cleared off if they had properly attended to their business. I have no objection to a commission to clear off the present accumulation of business, because I would like to see our new court of appeals start off with a clean calendar, so that they shall be able to do the business promptly that shall come before them; but I do object to any system that shall permit a kind of side court or tender to the court of appeals, to come into existence every ten years for the purpose of clearing off the accumulation of business that ought to have been disposed of by the regular court of appeals. Have I answered the gentleman's question?

Mr. M. I. TOWNSEND—No, sir; on that point I agree with you.

Mr. SMITH—I did not intend to go into a full discussion of this matter at present, and will not protract my remarks. I move that the committee rise, report progress, and ask leave to sit again.

The question was put upon the motion of Mr. Smith and it was declared carried, whereupon the Convention rose and the PRESIDENT *pro tem.* [Mr. ALVORD], resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Judiciary, had made some progress therein, but not having gone through therewith had instructed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. GOULD moved that the Convention adjourn until Monday evening next at seven o'clock.

The question was put on the motion to adjourn, and it was declared carried.

So the Convention adjourned.

MONDAY, November 25, 1867.

The Convention met at half-past seven o'clock, pursuant to adjournment.

Prayer was offered by the Rev. EDWARD BAYARD.

The Journal of Saturday last was read by the SECRETARY, and approved.

Mr. ALVORD—I have received a letter from the Hon. Mr. Bergen, informing me of the severe illness of his wife, and requesting me to ask that he be permitted to be absent during the week.

There being no objection, leave was granted.

Mr. HATCH—I desire to ask leave of absence for my colleague, Mr. Potter, until Friday next.

There being no objection, leave was granted.

Mr. ARCHER—I wish to ask leave of absence for Mr. Sherman, indefinitely.

There being no objection, leave was granted.

Mr. DUGANNE presented a memorial with reference to equalizing taxes and rents.

Which was referred to the Committee of the Whole.

Also, two memorials against sectarian donations.

Which took a like reference.

Mr. BARKER presented a remonstrance from the trustees of the Free Academy and Union School, of Forestville, against the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. MORRIS—I offer the following resolution.

The SECRETARY read the resolution, as follows:

WHEREAS, It now seems probable that this Convention may not be able to complete its labors before the 24th of December; and

WHEREAS, This Assembly Chamber will be required by the Assembly immediately after the holidays; and

WHEREAS, The act creating this Convention permits it to adjourn to any other place within the State; therefore

Resolved, That a committee of two be appointed to proceed to the city of New York and ascertain what suitable public halls can be obtained for the use of this Convention after January 1st, 1868.

Mr. ALVORD rising to debate the resolution, it was laid over under the rule.

Mr. PROSSER—I call up the resolution I offered a day or two ago, calling upon the canal board to report at the earliest day practicable the capacity of the Erie canal to pass property.

The SECRETARY read the resolution, as follows:

Resolved, That the canal board be requested to report to the Convention, at the earliest day practicable, what is the capacity of the Erie canal to pass property eastward, and whether, in the opinion of said board, any increase of property is necessary to accommodate the increasing trade of the Western States, and whether there is any danger of diversion of trade out of the State without any further improvement of said canal.

The question was put on the resolution of Mr. Prosser, and it was declared adopted.

Mr. McDONALD—I offer the following resolution. I ask to have it read for the information of

the Convention, and laid on the table to be printed.

The SECRETARY read the resolution as follows:

Resolved, That direct taxes within this State shall hereafter be levied subject to the following rules:

1. All property within this State (not in transitu through the State), including all choses in action owned by, in the possession of, or controlled by any resident person, partnership, association or corporation, shall be equally assessed and taxed according to the value thereof.

2. All deductions on account of debts shall be uniform as against the assessment of real or personal property.

3. All exemptions shall be uniform throughout the State, and the bill authorizing the same must receive the approval of two-thirds of all members elected to both branches of the Legislature.

4. Every resident person, partnership, association or corporation shall make a sworn return of all taxable property owned by, in possession of, or under the control of him or it.

Which was ordered to be printed and laid on the table for future consideration.

The PRESIDENT presented a communication from the commissioners of the New York fire department.

Which was read by the SECRETARY and was laid on the table and ordered to be printed.

The Convention again resolved itself into Committee of the Whole on the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN announced the pending question to be on the amendment proposed by Mr. Rumsey, being an amendment to the amendment offered by Mr. A. J. Parker, to be inserted after the words "for fourteen years," in the fourth line, as follows:

"The judges of the present court of appeals shall be judges of the court hereby created, and shall hold their offices until the expiration of the terms for which they were severally elected. The remaining judges of said court shall be so classified with reference to the present judges that one of the judges of said court shall go out of office, and his place be filled by a new election at the end of every second year."

The question immediately before the committee was announced to be the adoption of the first proposition of the amendment to retain the present judges of the court of appeals.

Mr. M. I. TOWNSEND—Before this question is taken up, I wish to say one word more in regard to the degradation in the public estimation of the courts of this State. I hardly know what I should have supposed was the depth of degradation to which the jurisprudence of the State of New York had reached, had I been a stranger in the State and had commenced to learn the present condition of our courts from the gentleman from Fulton [Mr. Smith]. As near as I can quote my friend, he held that the reports of New York are a disgrace to the State, and that there was no State in the Union whose reports stood as low in the estimation of the people of the United States outside of New York as the report of our own

State. In regard to what my friend said as to the estimation in which our reports are held as compared with the decisions and reports of other States, I cannot be mistaken, because my friend and myself had some discussion on this subject in the hearing of the Convention. Now, sir, I am not to stand here as the unqualified eulogist of every decision that has been made in the State of New York for the last twenty years. I should be very unwise to undertake a task of that kind. I do not undertake to stand here as the eulogist of every judge who has been sent to the bench; because it is undoubtedly true that there have been judges during the last twenty years, who have not done much honor to the position which they held. But, sir, I unhesitatingly do assume the position that the jurisprudence of the State of New York for the last twenty years will bear rank honorably with that of any State, any kingdom, any country, in ancient or modern times. I do not hesitate to say (and I know to what I subject myself if I commit an error in speaking to a body of men a very large majority of whom are lawyers, who have been engaged in the practice of the law for the last twenty years, by my side.) I do not hesitate to say that the New York State reports proper, the reports of the decisions of our court of appeals, stand to-day in the estimation of all legal scholars, who have read them, in advance of any other legal production of that kind that the world has ever seen. Sir, I cannot consent to sit still and hear my State and my profession with whom I have lived and moved stigmatized in the manner in which my friend from Fulton [Mr. Smith] has felt it his duty to stigmatize it, in this respect. I have taken part, a very humble part, in the history of the State, in which we have lived and moved for the last twenty years. I am proud, when I go abroad, among the lawyers of other States, and confer with them in regard to the character and standing of the reports from our court of appeals. But my friend from Fulton has charged that there are a great many volumes of law reports in our States and that seemed to be one great grievance under which my friend was suffering. He seemed to think that the publishing of so many volumes of reports was the sin of the judiciary.

Mr. BECKWITH—I call the gentleman to order. I think he should confine himself to the question before the committee. The number of volumes in the State reports has nothing to do with that.

The CHAIRMAN—The Chair must hold that the point of order is not well taken. The gentleman will proceed.

Mr. M. I. TOWNSEND—The gentleman from Fulton [Mr. Smith] urges, as I understand, as the reason why this amendment should not be adopted to wit: that our present judges of the court of appeals should not be legislated out of office by this Convention; that we have too many volumes of reports. I consider it onerous for gentlemen to purchase all of the books that are published in regard to legal matters. But, sir, I do not understand wherein either the judges of the court of appeals or the judges of the supreme court are at fault in respect to so many reports be-

ing published. The difficulty is deeper than my friend has seemed to imagine. The difficulty is that we are not a little State, seven by nine, in territory or interests, where you might put all that is said, all that is done, all that is owned in the whole State, from side to side, in your pocket at one time. We are a great State; we are, in fact, an empire, in our interests as well as in territory, and there must be a great many causes decided, there must be a great many opinions written, and if all are reported, there must be an immense amount of reports published and circulated in the State. Unless my friend is willing to introduce a farther provision that we shall restrict the publication of reports, I do not know any way to prevent them. But my friend says that judges do not uniformly agree. Sir, they cannot uniformly agree unless you make cast-iron judges. If you allow judges intellect, if you allow judges difference of education and diversity of powers, there will necessarily be difference of opinion. But it may be said we have too many judges. The judges that we have certainly are the hardest working men in the State, and yet they cannot do the work that necessarily comes before them. But it does not prove that these judges are incompetent because, from the character of the work they are set to do, it can not be accomplished by them. But my friend has another grievance, which is that too many cases go to the court of appeals. Now let us look for a moment at this alleged fact. I am unable to form an approximate idea of the number of cases tried and decided in the State of New York in a single year. Certainly, any man acquainted in the least with the jurisprudence of this State, will bear me out in saying that more than ten thousand litigated cases are tried and decided in the State of New York every year. A gentleman near me says fifty thousand. I think he is much nearer the truth than I am. But I will confine myself to saying that more than ten thousand litigated cases in the supreme court are tried every year. Now, a portion of these cases, and much the larger portion, more than three to one, stop in the trying. They are tried before a referee, tried before a judge, or tried before a judge and jury; and yet much the larger portion stop on the first decision. And in that portion of the cases where the parties are not satisfied with the first decision, they go to the general term of the supreme court. Eight general terms of the supreme court, in this State, have jurisdiction of, and consider and dispose of cases. It will be found that out of a large number of cases, whether it be ten thousand or whether it be fifty thousand, or whatever number it may be, not more than four hundred are appealed, in a single year, to the court of appeals—a very small number in comparison with the whole number of cases tried and decided. I would not refer to these things, but if one were to listen to the eloquent speech, I had almost said philippic, of my friend from Fulton [Mr. Smith] they would suppose that the courts of this State had reached a degree of degradation and public obloquy such as no tribunals have ever reached in any other country. But instead of that being so, out of more than ten thousand cases, tried and decided in the supreme court in one

single year, only four hundred of them are carried to the court of *dernier resort*. And of the four hundred that are carried to the court of appeals one-half of them, nay, probably quite three-fourths of them are sent back to the supreme court with the decision affirmed. I say this, because I had commenced with what some characterized as rather a strong eulogium of the supreme court and because I felt it to be my duty to call attention to the actual state of things existing among us. Now, in regard to this matter of diversity of decision among the various judicial officers in the State I do not know how far I shall be borne out, but I shall be greatly surprised if that multifarious reporter, Barbour, would show to-day, more than a dozen questions in his whole library of reports that he has published, in which any two districts in this State had differed in opinion. Then where is the great mischief of having diverse opinions that should lead us to the destruction of the system under which we are living and moving and which has worked so well as this system has done? A court of three judges sit at Poughkeepsie and consider a question, and a majority come to one conclusion. The same question, at about the same time, is presented before the judges who are sitting at Saratoga, and a majority of these judges come to precisely the opposite conclusion, and the case goes to the court of appeals, where it is decided and fixed forever. This is all the difficulty that results from the system, and it is a difficulty which must arise just so long as you have more than one man to transact the business of the State. Now, I should be very glad if we could get along in this State with one man to transact our judicial business but instead of that we must not only retain our present judicial force, but we shall be required to add to it from time to time, as the population and the business of the State increase and expand. We have not yet reached the ultimatum of business in the State nor of business interests. The business of the city of New York alone is more than the business of half a dozen ordinary States in the Union, and until the city is separated from the State our business interests must continue to be immense, and controversies and litigations must be constantly increasing, and we shall require a very great judicial force. Now, as to this matter of the standing of our reports in public estimation. My friend said, very adroitly, that the reports of the supreme court of New York do not stand so high as the reports of the supreme courts in some of the other States. I am entirely willing to concede that fact, if my friend desires it; and it results from this cause: in a large proportion of the States in this Union the supreme court is the court of *dernier resort*, occupying the same position as our court of appeals; and therefore the gentleman has invited us to compare the decisions of a trial court in our own State with those of courts in other States not engaged in trials, as is the case with the supreme court in Iowa, Massachusetts and in several other States. Now, I am not the eulogist of every feature of our present system. I think it was a mistake to carry judges from the supreme court into the court of appeals. I think it is a great mistake to allow a judge to sit in review

of his own decisions; and perhaps the greatest evil resulting from the supreme court judges going into the court of appeals lies right along in connection with that idea. The statesmen of 1846, when they formed that Constitution, believed that a judge who had heard a cause at the circuit would be better able to appreciate and understand it when it come up to be argued before him a second time; but results have shown that judges are men, and that, instead of being converted by hearing a second argument, judges, in ninety-nine cases out of a hundred, are only confirmed in the opinion previously formed; and under this system it has often happened that a judge who tried a cause at the circuit wrote the opinion at the general term, and when the party took the case to the court of appeals the same judge again met him "at Philippi," and controlled the decision of the court of *dernier resort*. This part of the system I should like to see changed, and I believe that in desiring that change I am in accord with every member of this Convention. I believe there is no difference of opinion on that point. I believe we should all be glad to see that feature of the present system changed, and that our court of appeals, of whatever number it shall consist, should be a permanent court, sitting permanently from year to year, and that they should be put in a position where they could come to the examination and decision of causes unaffected by any views or prejudices that might have arisen in the minds of the judges in the inferior courts in the earlier proceedings in the cases. But with this exception I am entirely satisfied with our court of appeals. Not that it has been able to do all the business that ought to be done or that it was called upon to do. Indeed, I believe that but for the desire to see the suffrage enlarged in this State, and but for the desire to see more power given to the court of appeals, and but for the desire to see judges prohibited from reviewing in the court of appeals their own decisions in other courts, this Convention would never have been called. I do not believe, sir, that the people had any desire to go on a raid and tear up their organic law from the foundation. I did not believe it when I came here, and I am not convinced of it now. My friend from Fulton [Mr. Smith] and myself, have different notions of our duties here; and as there are a great many lawyers in this Convention I may illustrate our difference by a comparison which will be readily understood by members of the profession. When we sit down to the trial of a cause it is usually a very important question to determine upon whom the burden of proof rests. Now, when my friend and I sit down to the examination of a provision of the Constitution as it stands, I think we differ upon just that question, as to whom the burden of proof rests on. I feel that it rests upon those who say that the provision should be entirely abrogated and something else substituted for it; but I judge that my friend feels that if a provision is in the existing Constitution, the burden of proof rests upon those who want to retain it, to show why it ever came there and what reason there is for retaining it. Now I am not here acting under the belief that we are to tear the Constitution to pieces at all hazards; I do not believe that we were sent

here for that purpose: I believe that the people desire and expect us to amend only those things that really need to be amended, and to leave at least the shreds and patches of the old Constitution; enough of it, at all events, to amend by. I have thus spoken upon this subject simply because I commenced speaking, as my friend supposed, very eulogistically, of the permanent judges of the court of appeals, feeling as I did that the whole judicial system of the State was not so bad as it was possible for a system to be; but now that I am on my feet, allow me to say one thing more. I see it stated in a paper for which I have a great respect and which I read every day, that I significantly omitted to praise the judges of the first judicial district. I meant to be understood as not speaking of the first judicial district, because the press of that district, and a portion of the residents, find more or less fault with the courts, but that there may be no mistake upon that subject, I am bound to say, that I am personally acquainted with three members of the supreme court in the first judicial district, and that I do not believe there are more intelligent or honorable men in the State, than either of the gentlemen that I have the pleasure of being personally acquainted with. It is my duty to say so in regard to the opinion that I entertain of these gentlemen, although I should not have said it had it not seemed that I was invidiously throwing slurs upon them. The other members of that court in the first judicial district, that I do not know, I leave to those who do know them, to offer their own opinions in regard to them.

Mr. SMITH—I ask the indulgence of the committee for two or three minutes, while I make an explanation. There happen to be present to-night quite a large number of members who were not here on Saturday, when I had the honor to submit the few crude remarks upon which my friend from Rensselaer [Mr. M. I. Townsend] has commented with so much freedom to-night, and it would be wholly impossible for those gentlemen to understand the position which I then took, from the representation of my remarks made by the gentleman who has just taken his seat. Now, what was the issue between us? The gentleman from Rensselaer had pronounced a glowing eulogium upon our present judicial system, a eulogium which condemned the majority report, the minority report, and the views of every member of this Convention who has urged any change in our present system. With the view of meeting him on that ground, and showing that our present system is vicious, I stated the well known fact that we have eight distinct supreme courts in the State; courts which are at least practically distinct, promulgating from time to time conflicting opinions upon the various questions that arise; and that consequently there is a great state of uncertainty and confusion in regard to the law, and our reports are brought into contempt. I stated that our reports were not regarded in other States as good authority, and I say so now. It would have been fairer in the gentleman from Rensselaer, if he had correctly represented what I then stated, that there was a discrimination to be made between the reports of our court of appeals and the reports of our su-

preme court. I expressly made an exception in favor of the court of appeals, although I did state that even these do not stand as high in other States as they would stand were our court of appeals differently constituted. And I will state in this connection, that not long since, while in the supreme court of a sister State, I was there told by some members of the bar, on whose word I could place strict reliance, that the reports of the State of New York were not regarded by their court as authority. After making the remarks the other day, to which my friend excepts, a gentleman who is engaged in the compilation of law works, referred me to a case in the courts of Pennsylvania, where this matter was expressly commented upon. I have sent for the report this evening, but am unable to procure it, as the library is closed; but it is a case in which the court say, in substance, that from the organization of our courts, their want of permanency, and the frequent change in the judges, their decisions do not possess a high value. Now, I am as well aware as my friend from Rensselaer, that before this new system came into vogue, there was no State in the Union whose reports stood higher in all the sister States, in England, and wherever they were cited, than the State of New York; and I am also aware that since the change was made and our present system adopted, our reports have greatly fallen in the estimation of our sister States and of foreign tribunals. In my previous remarks upon this subject, I expressly stated that the evil complained of was not for want of capacity in our judges, not because they were inferior men, not because they lacked ability, integrity, or industry, but that it was solely due to the inherent viciousness of our system. My friend says that he and I look at this matter from different standpoints, that we take different views as to the party on whom the burden of proof rests. I had supposed, Mr. Chairman, that it was pretty well settled by the people of this State, by the almost unanimous opinion of the members of this Convention, by the opinion of the able committee who have had this matter under consideration, and examined it so long and faithfully, that we need some change in our present judicial system, and that the desire to secure such a change was, more than any thing else, the cause of calling this Convention. I did express surprise, and I now express surprise, that my friend from Rensselaer, or any other intelligent member of this Convention, should stand up and urge that our present system needs no change, that it is perfect in itself—a kind of judicial paradise—such as he represented it to be in his eloquent remarks the other day. But I understand the gentleman to concede now that there are vices in this system. He thinks it a defect that men sit in review of their own decisions. Well, if that is a defect, why not be willing to correct it, and why represent me as a destructive, seeking to tear down the fair fabric of a wise judicial system? Sir, I say now that so far as our present judicial system is concerned, I believe the people demand that it shall be torn down from foundation to capstone, buttress, and wing, and turret. It is not a system fit to be adopted, or to be maintained in

any intelligent community, and I hope that it will be torn down. If I am to be charged with being a destructive, because I wish to see that system overturned, then make the charge. I rest upon the imputation, and I glory in it.

Mr. W. C. BROWN—The only question before the committee now is simply whether we shall propose to the people a Constitution whereby the present judges of our court of appeals shall be legislated out of office before the expiration of the terms for which they were chosen. That being the simple question before us, it seems to me that it is not a pertinent argument to show that our legislative system is defective, or that judges sometimes, as has been urged, write long opinions, or that people will print them, and that other people will read them. The first question to be considered upon this proposition is, have the judges of our court of appeals honestly, impartially and faithfully discharged the duties for which they were elected? I have not heard from any source, in this Convention or elsewhere, the first word of complaint against them as to their integrity, their soundness of judgment, or their industry; nor have I heard the first reason given why we can expect to have any better or wiser judges than we have now, if we remove them from their offices. I see, therefore, no reason of expediency why they should be removed; but I think I do see that it would be a great breach of good faith and of common honesty. If you employ a mechanic or an artisan or a clerk for a certain period of time, months or years, at stated wages, you do not feel yourself at liberty to discharge him short of that period, without making him satisfactory compensation. You will not tell me that the reason is that the common law forbids you to do it, and will compel you to make compensation, if you do not do it willingly? That certainly is not the reason. You do not stop to inquire what is the law. The real reason is that your own conscience, your own sense of justice and right, forbid you to do otherwise; and you compensate the man because it is right to do it. Now, in the case of your judges of the high courts, you have the power, if the people adopt the Constitution which you propose, to remove them from office short of the expiration of the terms for which they were chosen, and for which they accepted office. You may do it by constitutional enactment, though contrary to the principles of the common law and of justice. But I insist that it is no more right to make such removal in their case than it would be to discharge your artisan or servant before the expiration of the term for which you had employed him. In fact, sir, it is a greater wrong to break the faith of the State to men in these high offices than it is for one individual to break faith with another. What manner of men are those whom you seek to fill your high judicial positions? Do you take a lawyer who has no clients, no business, no income from his profession, and place him upon the bench of one of your high courts; a man whom you can keep for one, two or three years, at your option, and then dismiss at your caprice, yet, leaving him just as well off as though you had never taken him away from his private affairs? I think not, sir; such are not

the men whom you ask to take high judicial positions. You seek the lawyer who has the largest business, the largest number of clients, the largest income from the honorable practice of his profession; and you ask him to accept the position and to serve the State from the bench of the court of appeals, or some other of your high courts; and what are the inducements which the people of the State, by the voice of their Constitution and their laws, hold out to him? Why, they first say, we will give you a salary of three thousand five hundred dollars a year. He answers, "That is nought; I am earning twice, thrice, it may be four times as much in the practice of my profession." What more have you to offer? And the people say, "In addition to that, we will give you an exalted position, where you can make your name known and honored, and your knowledge useful, not only to your immediate neighborhood, but to the State and the country, and perhance to the world, and we will insure to you that position for the period of eight years, by the terms of our Constitution, on the condition, only that you serve faithfully and well." And it is upon this inducement that the offer is accepted. Now, I say, here is a pledge of the public faith, as binding in honor as an express contract; and although you have the power to destroy that *quasi-contract*, to rescind it before the expiration of the term for which it is made, I say you have no moral right to do it. It would be great injustice. You give to the judge, it is true, when you dismiss him the privilege of returning to the practice of his profession from which he has been excluded. But his business, built up by long labor, is gone; his clients have formed new relations; and his mental character has changed from that of the ardent, successful advocate to that of the cool and able judge, and he cannot change back. You give him the poor privilege, which every one else has without your leave, of seeking votes for office. And if he can obtain a nomination from a selfish partisan convention of delegates from petty packed caucuses, he may be re-instated. But nothing of this kind can atone for your great injustice.

Mr. HALE—I move that the vote on this question be postponed until to-morrow. This proposition is a very important one; and as there are several gentlemen absent who were here last week during the early part of this debate, and who will undoubtedly be here to-morrow, I hope that no objection will be made to postponing the vote upon this question until to-morrow.

The CHAIRMAN—The Chair must hold that the motion of the gentleman from Essex [Mr. Hale], to postpone, is not in order in Committee of the Whole.

Mr. HALE—I suppose it can be passed over by unanimous consent or by a vote of the committee.

The CHAIRMAN—This amendment may be passed over for the present. If that be the motion it will be entertained.

Mr. HALE—I modify my motion to that effect.

The question was put on the motion of Mr. Hale to pass over for the present the consideration of the amendment offered by Mr. Rumsey, and it was declared carried.

Mr. SPENCER—I move to amend by striking out all after the word "of," in the first line, down to "appeals," in the second line, so that the section shall read, "there shall be a court of appeals composed of seven judges, who shall hold their office for fourteen years, and shall be ineligible for the second term. The chief judge shall be appointed by the Governor, with the consent of the Senate; the other six judges shall be elected by the electors of the State. At the first election of judges, no elector shall vote for more than four persons as candidates for the office."

The question was announced on the amendment of Mr. Spencer.

Mr. RUMSEY—I would ask the gentleman whether he intends to give this court any other than an appellate jurisdiction?

Mr. SPENCER—No, sir.

Mr. RUMSEY—Then those words are necessary to restrain its power. If they are stricken out, the Legislature may give it an ordinary jurisdiction.

Mr. SPENCER—My object in offering the amendment is this, first to follow the present Constitution, believing as I do, that it is unwise to change the language of an existing Constitution or statute, unless there is some mischief to be remedied by the change, or some clearly desirable object to be attained by it. But besides that, there is another suggestion which occurs to me, but which, perhaps, in the view of other gentlemen may not be valid. If the words "appellate jurisdiction" are retained, the powers of the court may be so restricted that it will not possess the jurisdiction that it may be desirable it should have. One office of that court is to review the judgments of courts in criminal cases, and that is done, I believe, not upon an appeal, but upon a writ of error issued to a subordinate tribunal; although perhaps this power may come under the general designation of "appellate," it is possible that the question may be raised that it is not so.

Mr. FOLGER—The language in the section was adopted by the committee, not from mere caprice, or without consideration, and its object was to meet just the query which has been put by the gentleman from Steuben [Mr. Rumsey]. The mere christening of the court of appeals "the court of appeals," does not hamper the Legislature in giving to the court any jurisdiction other than appellate jurisdiction if the Legislature so choose; and although we have gone on from 1846 down to this time without jurisdiction being given to it, other than appellate jurisdiction. It was thought best by the standing committee to express in the Constitution the fact that this court was to be one merely of appellate jurisdiction. That could not of a certainty be obtained solely by giving it the name of "court of appeals." It was necessary, as we conceived, to insure certainty that there should be some phrase to constrain the Legislature. The difficulty suggested by the gentleman from Steuben [Mr. Spencer], it seems to me, does not arise in relation to the criminal cases brought from the lower courts, by writ of error, to the court of appeals. Leaving the language as it is in the old Constitution, then is there any thing to prevent the court from having appellate and original jurisdiction at the same

time? For this reason it seems to me the phraseology should express what we desire.

Mr. SPENCER—Does any court issue a writ of error except by virtue of its original jurisdiction?

The question was then put upon the adoption of the amendment offered by Mr. Spencer, and it was declared lost.

The question recurred upon the adoption of the amendment offered by Mr. Smith, as amended by the motion of Mr. A. J. Parker.

Mr. M. I. TOWNSEND—I move to strike out the words "and shall be ineligible for a second term." I believe that the proposition to render judges ineligible for a second term is founded upon an entire mistake as to the workings of human nature. My observation has led me to believe—

The CHAIRMAN—The Chair was in error in entertaining the amendment of the gentleman from Rensselaer [Mr. M. I. Townsend], as that has already been adopted on a distinct division.

Mr. M. I. TOWNSEND—Then I move to reconsider that vote.

The CHAIRMAN announced the question on the motion of Mr. M. I. Townsend, to reconsider the vote of the committee by which this branch of the amendment was adopted.

Mr. VAN CAMPEN—I rise to a point of order. That same motion to reconsider was made and voted down.

Mr. E. A. BROWN—That was upon another question.

The CHAIRMAN—The Chair is of opinion that the motion of the gentleman from Herkimer [Mr. Graves] was not to reconsider this branch of the amendment of the gentleman from Albany [Mr. A. J. Parker].

Mr. M. I. TOWNSEND—I believe, sir, that the strongest motive that influences, or at least one of the strongest motives that influences men to good conduct, is the hope of the approval of their contemporaries; and I believe that no stronger motive can be offered, even to a man occupying a judicial position, than the desire to receive the approbation of his fellows for his doings as a judge. But, on the contrary, I believe that human nature is altogether too weak to be set in motion, in any position, without being surrounded by all the sanctions and all the aids to good conduct it is possible to bring to bear upon an individual. My observation in the world has taught me that judges that hold for life, that judges that ask nothing of the world about them, that judges who cannot be benefited or injured by the course they have adopted in the pursuit of their business, are less diligent in the discharge of their duties (for why should they be diligent?); that they are less courteous in their intercourse with the bar; that they are more arbitrary and regardless of the interests of others, and that the whole effect upon the judge himself is injurious to the last degree. But what is the argument on which it is now proposed to render the judges of the court of appeals ineligible? If I understand it, it is this: that if you allow them to be re-eligible to the same position, they are liable and likely to be swayed by popular clamor, to yield to the current cry of the day, and thus pervert the course of

justice. Is there any thing in the history of the court of appeals to justify this conclusion? And here I sit down to the examination of this question, urging that the burden of proof rests upon those who propose to make this change. I ask gentlemen upon this floor, without the fear of being met by any possible affirmative answer to it, if there ever has been a case where your court of appeals in the last twenty years, has been believed or presumed to be swayed by the popular cry and current of the day? I am prepared to go further. I am prepared to ask this question. Where has been a single judge that has been swerved from his notions of duty or suspected of being swerved from his notions of duty, in consequence of a desire to commend himself to the voters of the State? Gentlemen forget the history of this State; they forget the history of the court of appeals; they forget the conduct of the noble men that have sat in that place, whom they are condemning here. You, gentlemen, forget the time that Hiram Denio, a democrat though he was, when the cry of his party was that the police law enacted for the metropolitan district, was unconstitutional, when his party was arrayed as strongly as it was possible for partisans to be arrayed, against that law, stood up in his place and announced a decision that set him, apparently, at war with that party. Have the gentlemen of this Convention forgotten a much more recent instance, when Judge Selden, of Rochester, republican though he was, selected a republican and expecting election at the very coming fall, set himself against the republican sentiment of this State by holding in his place the unconstitutionality of the law allowing the issue of greenbacks? Thus shows that these men can be trusted, notwithstanding the temptations that stand before them in the shape of a wish to be re-elected. Yet Judge Denio was re-elected, and Judge Selden was elected, and this is the result I desire to see. The judges of the court of appeals have been taught in this State that the way to secure a re-election is to serve God and act according to their consciences. But whatever gentlemen may say in regard to the supreme court of this State it is perfectly understood that the judge who caters to popular clamor and popular prejudice does not aid his chances for re-election thereby. There may have been in some of the other courts, in some parts of the State, perhaps a single instance to the contrary; but I will say one word in regard to the supreme court—because that is proper as illustrating this principle—I want to call the attention of this Convention to this fact. Twenty years ago there were in this judicial district some four thousand voters—all excitement about the question called the anti-rent question, the question as to the legal status of the manorial grants originally issuing from the Van Rensselaers. For more than twenty years that body of men held the controlling influence in this judicial district. Yet during that entire period the judiciary of this district have never rendered a decision sanctioning the views of that class of voters—not one. I utter this as much for a tribute to the judiciary now holding place in this district, and who have heretofore held

places in this district, as I do in illustration of the doctrine I have laid down; that if you want a good judge, make it for his interest to make the community believe he is a good judge; a faithful judge, and a courteous judge. If your judges were, as a gentleman says I undertook to make the Convention believe on Saturday, if they were ready to be translated, we might have a different state of things. It is because our judges are not ready to be translated, that I do not wish to be compelled to pass my life in a court where the judge is above popular consideration. I do not wish any tyrant. If there is any gentleman on this floor who wants a tyrant over him; if he wants a judge who says, "My tenure is secure for fourteen years, and you cannot influence me in any possible respect;" if any gentleman wants to go before such a tribunal, he is welcome to it. The children of Israel at a certain date wanted a master put over them; and although the prophet of God remonstrated with them it did no sort of good. They had a sort of idea that it would check "legislative corruption," but they must have a tyrant and nothing that could be said made any difference; I do not know that any thing that could be said on this subject would make any difference here; but I do not mean to put my hand to a proposition to create any body of men who shall not think it for their interest to treat the public well, serve faithfully, and be courteous in the discharge of the duties of their office. I think we may make a very great mistake in regard to this matter. I practiced law for ten years under the old system. I am occasionally called to go into the United States court to practice law now. I have practiced law somewhat extensively for the last twenty years in a State court where the judges were elected and where my vote has seldom had any thing to do with making or unmaking the judge. But I have found that the State system worked well. I have found that the judges were the most laborious men in the world. I have found that our judges were among the most agreeable men in the world. I have found them often deciding against me. I have found them often deciding against me when they were in the right and I was in the wrong. But I have never taken any such offense at those decisions that I would break up the very system in which these judges were moving, simply because they had occasion to decide against me. And I say as I find this system working well, I do not believe there is any occasion in the world to radically overturn it. If I am right about it, we shall have more laborious judges; we shall have equally conscientious judges; we shall have judges as little swayed by improper motives, and a great deal more courteous judges, if they feel that they are responsible to the community in which they live, if they feel that the only way to secure an election is to do their duty like men.

Mr. WAKEMAN—I voted for the amendment of the honorable gentleman from Albany [Mr. A. J. Parker], intending, however, if an opportunity should offer, to vote to strike out the portion which is included in the amendment of the gentleman from Rensselaer [Mr. M. I. Townsend]. I believe that it is not a question alone for the

judges, whether they shall be re-elected or not, or whether they shall conduct themselves in such a way as to deserve re-election by any decision they may make; I believe it is a question virtually for the people, whether they shall have the right to re-elect a man after he has served twelve or fourteen years, and continue him in his position. If a man should take the place of a judge of the court of appeals at the age of forty-five years, or forty years, he would be right in the prime of his usefulness at the expiration of his term, when it perhaps would not be any particular object on his part to be re-elected, when it would be an object to the people to re-elect him. And the only reason assigned for not allowing this is that when the judge shall be elected with a knowledge that he is ineligible to a second election, his sole purpose will be to serve his State faithfully and honestly. I believe that a judge who is placed upon the bench of the court of appeals will act in that way without reference to the question of re-election at all. In our part of the State, I believe I have never heard a complaint made against the judges we have elected there, of rendering partisan decisions, although they are all one way. It may have been done, but I do not remember the case where a decision has been made that is called partisan; and although I do not live in the city of Buffalo, I sometimes read the decisions of the judges of the superior court, who are all the other way, and I do not remember to have heard it said that they ever rendered a partisan decision, or one that was calculated to aid this man or that man for the purpose of any election. I believe that we should sustain the amendment of the honorable gentleman from Rensselaer [Mr. M. I. Townsend], and allow the judges to be re-elected; and I would fix the time at twelve instead of fourteen years. If they are to be ineligible, then I would make it sixteen years, in order to give them the longest term I could; but in view of their re-election, I would make it twelve years, which would be the precise term fixed by the gentleman from Clinton [Mr. Beckwith] in the change he proposed to the report of the majority of the committee. I believe this will satisfy the people of this State better than to fix the term at fourteen years, and then say that the people shall not have the opportunity to re-elect the judges. For these reasons I shall vote for the amendment proposed by the gentleman from Rensselaer [Mr. M. I. Townsend].

Mr. A. J. PARKER—I trust, sir, this may not be reconsidered. I regard this provision as an exceedingly valuable one. It is proposed to extend the term of service from eight years to fourteen years, and then, as a part of the change, to make the incumbent ineligible to a second term. Ineligibility is objected to. Experience has shown that whether a judge is to be re-elected or not depends upon the strength of his party. It has been shown in regard to the court of appeals just as much as in regard to the supreme court, in several instances that have occurred under the present Constitution, an incumbent in office who is a candidate for re-election will generally receive, perhaps, a thousand or two votes from the bar beyond his party strength; but it is not generally

enough to secure the re-election even of a very deserving judge, or one whom it may be very much for the interest of the public to retain on the bench. Inasmuch, therefore, as we have come to the elective system, and inasmuch as experience has shown that the re-election of a judge will depend upon the strength, for the time being, of the party to which he belongs, and that his own merit cannot secure it unless the parties be very nicely balanced, I believe it is a much better way to extend his term and to make him ineligible. Now, I would make him ineligible because I would make him independent. I would place him in a position where he shall have no inducement to mingle in the partisan struggles of the day. If he is eligible, and his eligibility depends upon the success of his party, he has every inducement to take part in politics, and mingle in the strife between different parties, to endeavor to secure the ascendancy of his own party that, when his term expires, he may be re-elected. I would withdraw that inducement from him. I would place him in a position of entire independence. A judge should not mingle in politics.

Mr. M. I. TOWNSEND—Has the gentleman from Albany [Mr. A. J. Parker] even suspected any of the judges of our court of appeals or of our supreme court of unduly mingling in politics?

Mr. A. J. PARKER—Yes, sir; I have.

Mr. M. I. TOWNSEND—Then I have nothing more to say.

Mr. A. J. PARKER—Judges should not mingle in politics. They should have their own opinions—they have the perfect right to them, and to speak them freely and independently, and to vote as they please; but they should not take part in the struggles of party. They should not attend conventions as delegates. They should not make themselves partisans. They should not struggle for the ascendancy of party for the purpose of retaining themselves in office. I would make them ineligible because I would make them independent. I would make them better judges. And then, if a judge takes an office with that tenure, he understands at the commencement—he knows precisely what he has to expect, and he can judge at the commencement whether it is wise to take that office or not. On the other hand, if he takes it subject to the chances of re-election, he is at the caprice and the sport of party politics. He may be thrown back upon his profession when he is incapable of resuming the practice successfully. That evil I would avoid. There are some members of this Convention that prefer that the judge should be appointed to hold until he is seventy years of age or for life. Then you secure that independence that is desirable. But there are others here that are opposed to the life tenure. Very well. Take a different system, but still preserve that independence; make him ineligible, make the judge holding his term for fourteen years feel just as secure and have just as perfect a knowledge of his term as if he were holding it for life; and then no one can complain. He cannot be disappointed; the public cannot be disappointed, for they elected him knowing just what they had a right to expect. I regard this feature as an extremely important and desirable one. I think we shall make a much

better court of appeals to give them a long term and make them ineligible. We shall avoid that objection that is made to the life tenure. I think the term of fourteen years is sufficient. I think it is long enough to induce the very best lawyers in the State to go upon the bench and serve the State in that capacity. I do not think a shorter term would do so. I think you are much more likely to secure the best talent of the State upon the bench with a long term, and the candidate ineligible, than you are to induce a person to leave a lucrative business for a short time, with a chance of being thrown out if his political party happens, at the moment when his term expires, to be in the minority. It is said by the gentleman from Rensselaer [Mr. M. I. Townsend] that you may expect more courtesy from judges who must return for a re-election to the people. I do not think so. I do not think such is the experience of the bar. I think you will find the judges of the United States court quite as courteous as the State judges—always. Where can you find a more courteous judge upon the bench than Judge Nelson, who has served there in different courts, on independent tenures, for forty years. I do not think the courtesy of a judge is to be drawn out of him by currying the favor of the bar. It is not to be purchased in the mode my friend supposes. It must come from the natural kindness of the heart or from a sense of duty, if not from a cultivated habit belonging to him. I do not think that the courtesy of the judge depends at all upon any thing of that sort; and I believe you will find no judges in the world more courteous than they are in the English courts, where they hold for life, and remain as independent in every respect as it is possible to make them. I have seen quite as little courtesy in judges of very short terms as I have seen in those of longer terms. I do not think that has any thing to do with it. Every judge has the inducements, first, of desiring to discharge his duty most conscientiously, and thus most satisfactorily to himself; and next, of endeavoring to do it most satisfactorily to the public. It is always an inducement to endeavor to please those around him, and to make the practice of the profession agreeable to those who are brought before him, and that inducement is quite as strong with the man who is not eligible again to the place, and he knows that all which he gains in the place will be the reputation with which he leaves it. I trust, this is not to be reconsidered. I believe it to be indispensable to a good and successful system; and since we have met here for the purpose of making the best possible Constitution, especially in this matter of public need, do not let us throw aside a provision like this and lose the opportunity of showing to the world that we can make a judiciary just as independent when elected by the people for a fixed term as when you let them hold for life, as is done in other parts of the world.

Mr. ALVORD—I have, sir, but one single practical question to ask the gentleman from Albany [Mr. A. J. Parker] in regard to this matter. I do not intend to enter into this discussion generally, at all. But I ask him, and I ask the mem-

bers of this committee, if you leave the matter as it is now—fourteen years and ineligibility for a re-election, whether it does not virtually compel a person either to be forty-five years of age before he seeks to be judge, or else have an abundant private fortune in order to enable him to take the position at an earlier age? Under that view of the case it does seem to me that this matter ought to be reconsidered.

Mr. HALE—I rise to a question of order. It is this: that under the provisions of rule 28—"If the motion to consider shall not be made on the same day, or the day after that on which the decision proposed to be reconsidered was made, three days' notice of the intention to make the motion shall be given."

The CHAIRMAN—The Chair decides the point of order not well taken; that rule is not applicable to the Committee of the Whole.

The question was then put on the motion to reconsider, and it was declared lost.

The question recurred on the adoption of the amendment of Mr. Smith as amended.

Mr. PRINDLE—I offer the following amendment to be added to the section.

The SECRETARY read the amendment as follows:

"No person shall be eligible to the office of chief justice or judge of the court of appeals who shall have arrived at the age of seventy years."

Mr. PRINDLE—This is a provision that was substantially reported by a majority of the committee, and I believe it is one that should be retained. My object in presenting it now is not for the purpose of preventing men of ripe experience and judgment from sitting upon the bench of the court of appeals, but in order that we may obtain the benefit of their being members of that court. We change the term for which a judge is elected from eight to fourteen years, and if the section stands as it does now, we must necessarily choose comparatively young men to sit upon the bench of the court of appeals. If a man has arrived at the age of sixty years, and is elected for the term of fourteen years, he will be seventy-four years of age before his term expires. He may be, by his extreme age, untirely unfit to occupy the position, and there will be no means of getting rid of him. Now, if this amendment be adopted, if the people see fit they can elect a man who is sixty years of age; the result will be, that he will serve for a term of ten years. They can, if they please, elect a man who is sixty-five years of age, and he will serve for a term of five years. It seems to me that this would be better; it is simply enlarging the field from which the people can choose their candidates for the judgeship.

The question was put on the amendment of Mr. Prindle, and it was declared lost, on a division, by a vote of 29 to 30.

A DELEGATE—There is no quorum voting.

The CHAIRMAN—That question was not raised until after the vote was decided.

Mr. M. I. TOWNSEND—I rise to a question of order. I appeal from the decision of the Chair.

The CHAIRMAN—The Chair is of opinion that there is a quorum present. The Chair

must still hold the point of order was raised too late—after the vote was announced.

Mr. M. I. TOWNSEND—I desire, if the Chair please, to appeal from its decision, and to give my reasons. It is impossible, from the nature of things, to tell whether there is a quorum voting until the Chair announces the vote. The question was raised upon the announcement of the number, as I understand it. It was impossible to make the point before. If I am right in that position, then I made the objection at the proper time and as early as it could be made.

Mr. GRANT—I would ask if we may not have another count upon that motion?

The CHAIRMAN—If gentlemen desire, the question will be put again.

SEVERAL DELEGATES—No, no; no, no.

Mr. WAKEMAN—Then I move for a reconsideration. I think, where we are so nearly divided upon the subject, we should have it decided one way or the other. While I am on my feet I will say, if this amendment is adopted, I can see no impropriety in extending the term from fourteen years to sixteen years.

The CHAIRMAN—The Chair will state that the question is on sustaining the decision of the Chair.

Mr. WAKEMAN—I supposed that was withdrawn.

The CHAIRMAN—The question is, whether the decision of the Chair shall stand as the decision of the committee.

Mr. AXTELL—If it is in order I would like to make a motion that the committee rise and report progress.

SEVERAL DELEGATES—No, no.

The CHAIRMAN—It is in order.

Mr. S. TOWNSEND—Is the question upon sustaining the decision of the Chair?

The CHAIRMAN—Yes. Shall the decision of the Chair stand as the decision of the committee.

Mr. S. TOWNSEND—Does the Chair propose to assign any reason for the decision?

The CHAIRMAN—The Chair had already assigned as a reason that the Chair had announced the result of the vote before the question was raised.

Mr. S. TOWNSEND—Will the Chair assign as a further reason that the practice has been in this body to decide that matter on the principle that any gentleman suspecting a close vote can call for a count before the vote is decided?

The CHAIRMAN—The Chair will be glad to have gentlemen assign in their own minds such reasons as may occur to them for sustaining its decisions.

Mr. RATHBUN—I understood the Chair to answer the gentleman that there was a quorum present. I supposed that would be a good answer upon this question of appeal.

Mr. E. A. BROWN—I move that the committee rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. E. A. Brown, and it was declared lost.

The question was announced on sustaining the decision of the Chair.

Mr. VERPLANCK—I would like to ask the

gentleman from Ontario [Mr. Folger], and the gentleman from Onondaga [Mr. Alvord], what is the correct rule on this subject? [Laughter.] It seems to me we ought to have some rule.

Mr. ALVORD—The gentleman from Onondaga thinks the Chairman is right.

The question was then put on sustaining the decision of the Chair, and it was declared sustained.

The question recurred upon the adoption of the amendment of Mr. Smith, as amended by Mr. A. J. Parker.

Mr. M. I. TOWNSEND—I move a reconsideration of the vote on the amendment offered by the gentleman from Chenango [Mr. Prindle]. If judges were to be elected for short periods I should be entirely opposed to the proposition contained in the amendment of the gentleman from Chenango. But if judges are to be elected for fourteen years I deem such a provision eminently proper. A gentleman at the age of sixty is in the apparent possession of abundant health, strength and mental vigor: and with that view, with that feeling, with that consciousness on the part of the people of the State, he is elected to the office of judge of the court of appeals. But in the ordinary course of human nature his powers fall without his being aware of it. He cannot be impeached, because he has done nothing worthy of impeachment. He cannot be removed from office; yet it has become apparent that he is unable to do the labor that necessarily devolves upon him as a judge of the court of appeals. His mental faculties have failed, but he stands in the position of an officer prepared to do the work of the court, through a positive obstruction to the progress of jurisprudence. It seems to me it should not be tolerated that such a man should be in such a position, and that there should be no power to remove him. Some men retain their mental and physical vigor so as to be enabled to discharge the duties of the court until they are eighty years of age. But the great mass of men become entirely unable to discharge the duties of such a position by the time they arrive at the age of seventy years. Now, it does seem to me that it will be a matter of prudence in this Convention if we extend the term from eight years to fourteen; that we fix an upper limit, that we provide that a judge shall not hold his office beyond the age of seventy. There certainly should be some limit in regard to a matter of this kind. The committee who made the report were fully imbued with this idea, because they reported a general provision that no judge should hold his office beyond the age of seventy years. It seems, now, since we have adopted the long term, the term of fourteen years, that it is eminently proper we should fix the limitation at the seventieth year. It will be seen in a moment that, under the present system, if a man is elected judge of the court of appeals at the age of sixty, he would, by the terms of our Constitution, go out of office in his sixty-eighth year. But if he be elected under a Constitution giving him fourteen years, at the age of sixty, he will hold it until the age of seventy-four. It was for the purpose of obtaining an opportunity of discussing this question that I appealed from the decision of the Chair. For these reasons I have

made the motion to reconsider. I hope we shall leave this question until morning. It is about the usual time of the committee's rising; it is nearly nine o'clock, and I move that the committee rise and report.

The question was put on the motion that the committee rise and report progress, and it was declared lost.

The question recurred on the motion to reconsider.

Mr. A. J. PARKER—In regard to the proposition of the gentleman from Rensselaer [Mr. M. I. Townsend] to reconsider, it must be borne in mind that we have had judges much beyond the time of life indicated, who have been very useful. I think Judge Cady was on the bench until he was eighty years of age, and he was very useful to the last. It is supposed that a judge may become incompetent, especially after he becomes seventy years of age. If it should happen he is incompetent after the seventieth year, or before seventy, at any time, there is a provision by which he can be removed by the action of the two legislative houses. We have such a provision now in the Constitution, and doubtless shall retain it in the Constitution we are about to make. It is not impeachment, it is nothing that casts an imputation upon the judge. The Legislature reserves to itself the right to remove judges for such cause as they think proper. You cannot determine the capacity of a judge by his age. He may be unfit when over seventy years of age. He may be equally unfit when less than sixty years of age. It may happen that he will be in a state of health such as will unfit him to discharge the duties of his office. In either case the Legislature has abundant power to remove him by joint resolution, and that without impeachment. I suppose the legislative provision is precisely adapted to cases like that. I do not think you can secure a state of circumstances that will admit of a general rule relating to age.

Mr. PRINDLE—Will the gentleman allow me to ask him a question? Will not the section, as it now stands, necessitate the nomination of comparatively young men for the court of appeals?

Mr. A. J. PARKER—I will answer that it will not; that conventions will be at liberty to nominate any man they think proper, and he will be at liberty to accept or not, as he pleases. You may say that a man would not be likely to accept the office unless he was forty-five years of age. That may be so; he may not. But you may find many persons abundantly qualified who would be willing to take the office for many years longer. It depends upon circumstances, of which he is to judge for himself.

Mr. PRINDLE—My question was, would a convention, for instance, be likely to nominate men who would be so old as sixty-five, under the section as it now stands?

Mr. A. J. PARKER—I do not suppose that age would control the matter, necessarily. They judge of the qualifications of a candidate, of the probabilities of his discharging his duty for the term of fourteen years.

Mr. HAND—I hope this motion to reconsider will be carried. It will be very delicate for the Legislature to remove a worthy man, although

every body may feel that he has become totally unfit to discharge the duties of the office in which he is acting. A man feels more sensitive on this subject than on any other. A man is generally more willing to be considered a rogue than a fool. He feels it is one of the gravest imputations that can be cast upon him, that as old age creeps upon him he is losing his faculties. It is the last thing a man will admit. Although he may be totally unfit for the duties of his office, the legislative body would be unwilling to remove him. Now, it is very true that some men are more capable of fulfilling the duties of the office at seventy-five years of age than others at sixty-five. Still, as in the matter of suffrage, the law fixes a period of time, it seems to me eminently proper that the time, at the close of a man's life, when his usefulness is gone, should likewise be fixed by the law. Some boys are better qualified to vote at the age of fourteen years than some men at thirty. But it is necessary to fix a period. A man may be suitable for the position of judge at the age of sixty-five. If a man, by his eminent ability and learning, by his legal mind, has shown his peculiar fitness, and the electors of the State desire to get such services out of him as he may be able to render them in that capacity, they should have the privilege of electing him as judge. Even if he survived but five years, his services may be of great benefit to the State. There are very few men, in my opinion, beyond the age of seventy years, who have not less vigor of mind, and who are not less qualified in those faculties that fit a man to discharge the duties pertaining to the office of judge of the court of appeals. For these reasons I hope this matter will be reconsidered, and the amendment adopted.

Mr. M. I. TOWNSEND—In the view I take on this subject I am happy to say I am not arguing in favor of the Constitution of 1846; and I hope my friends in this Convention who were not here when the Constitution of 1846 was framed, will remember that I am not arguing in favor of the provisions of the Constitution of 1846. Previous to the adoption of that Constitution our judges went out of office at the age of sixty. My friend from Albany [Mr. A. J. Parker,] will remember Judge Cushman, who went out of office on arriving at sixty, and the vacancy thus created was very worthily filled by another gentleman, Judge Cushman, although in the vigor of his mind, by the Constitution as it then stood, went out of office. Judge Jones, of New York, went out of office. But when the Constitution of '46 was adopted, Judge Jones was re-elected. It will be no disparagement to Judge Jones to say that however bright was his intellect, however splendid his acquirements as a jurist, he sat upon the bench in the city of New York until he was fairly and reasonably considered incompetent to discharge the duties of the office. I remember another judge who continued on the bench to a very considerable age. I remember a judge who could not have heard even if the heaviest thunders of Heaven's artillery were discharged over his head. [Laughter.] He was wholly beyond his usefulness. In regard to Judge Cady, I have no sort of doubt, from information I have derived, and

from having met him occasionally, that he was gifted with physical as well as intellectual power that enabled him to discharge his duties to a late period of his life, and with absolute correctness. But Judge Cady was an exception among our judicial men. I think it is not the case, that men at the age of seventy as often lose their intellectual as their physical powers. But it is utterly impossible for a man to sit six, eight, or ten hours a day in hearing arguments in court, understanding them as he ought, and pay that attention which will enable him to understand them, often until the small hours of the night, after he has attained the age of seventy years. It is an utter impossibility. There is not a man living who can perform the physical labor necessary to be performed by a judge of the court of appeals, as constituted in this State, after he shall have arrived at the age of seventy years. It is for these reasons that I concur with the views expressed by the gentleman from Broome [Mr. Hand], that the Legislature will permit almost anything sooner than injure the feelings of a capacious old man by removing him from office. There are not many that take the view that eminent jurist Judge Denio did. He says, "I want to leave the bench before my friends begin to suspect that I have got to be old." He left the bench in full possession of his intellectual powers. It will be well if that be done always.

Mr. HARDENBURGH—[I would like to ask the gentleman from Rensselaer [Mr. M. I. Townsend] if he does not agree with me, that in respect to the selection of judges, those over the age of fifty-six or fifty-seven should not be excluded. I may be wrong, not having been here for the last five or six days, but, as I understand it, the committee have settled down upon the term of fourteen years, and therefore either of the political parties, whenever they get together to select candidates, will be quite sure to select a man for this office who can, by the Constitution, live out his term of office; but by the adoption of the amendment now proposed by the gentleman from Chenango [Mr. Prindle] you could only get such men selected as were fifty-five or fifty-seven years of age. I suggest to members of the committee that it is very doubtful if any party would select a man who could not live out his whole term; but if they select him at fifty-six years of age he could be legislated out of office by the Constitution before the term had really expired. Therefore men at or beyond that age would be substantially cut off by this proposition.

Mr. HAND—I understand that the proposition of the gentleman from Chenango [Mr. Prindle] so far modifies the rule of fourteen years that we have adopted, as to make an exception where the person cannot live out that term without reaching beyond the age of seventy years.

Mr. K. A. BROWN—Gentlemen have named several distinguished judges who have lived to a good old age. Now, sir, as the provision stands, I do not see any difficulty in selecting a man who is sixty-seven, sixty-eight, or sixty-nine years old, except the inexpediency of it. Most men die before they are seventy years old and the recent

case of Judge Taney in the supreme court of the United States was an exception.

Mr. HAND.—He ought to have died before and left an honorable record.

Mr. E. A. BROWN.—He was eighty-four or eighty-five years old when he died, and he certainly performed his duties very vigorously up to a short period before his death: and I believe that if a man should be elected to the court of appeals, and at the age of sixty should become infirm and incapable, physically and mentally, of performing the duties of the office, he would do as Judge Cady did—resign his position. If the term of such a man was about to expire, or if he was tendered a nomination at the age of Judge Denio, he might very properly say, and he would be very likely to say, that he was too old. Now, a man may become physically and mentally incompetent at forty, or at any other period of life. When we see a man who is to all appearance sound physically and intellectually to-day, how can we say that he may not to-morrow be stricken by paralysis, as I believe has happened to one of the judges of the court of appeals, in this State. Nothing on this subject is certain except that all men are to die, and that most die without lingering out their existence through a period of gradual decay. I do not believe, sir, that it is worth while to trouble our heads with this matter. If the people see fit to nominate and elect to office for a period of fourteen years, under this provision, a man, when he is sixty or sixty-five years old, it does not follow, as a matter of course, that he is to live the full length of the term, nor does it follow as a matter of course that if he does live the full term, he will not be able to discharge the duties of the office. I think that nothing will be gained by undertaking to fix a rule upon this subject. The physical and mental capabilities of men do not essentially nor very generally, by necessity, depend upon their age.

Mr. MORRIS—I would like to add a few words upon this subject, having had occasion to see the ill effects of persons of impaired intellect having control in the military service. In that service there is a provision by means of which, when a man has shown by his acts and expressions that his intellect is giving way, he can be placed upon the retired list. There is no such provision by which we can get rid of a superannuated judge who may have had the good fortune for himself and the ill fortune of the public to be elected to that important position. For one, sir, I would be very sorry to have a case in which I was interested tried by a judge of an age exceeding seventy years. I am very much inclined to doubt that, in the generality of cases, gentlemen over the age of seventy years are possessed of sufficient mental capacity to discharge the duties of the judicial office in a satisfactory manner. It seems to me, therefore, that the amendment offered by the gentleman from Chenango [Mr. Prindle] is a sensible one, and I hope that the motion to reconsider will prevail.

Mr. PRINDLE—I regard this as a very important question; but as there is so very thin a house here to-night, and as I think there ought to be at least a quorum present when it is passed

upon, I hope the committee will now consent to rise and report progress, and I make that motion.

The question was put on the motion of Mr. Prindle, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT *pro tem*, Mr. ALVORD, resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee of the Whole, reported that the committee had had under consideration the report of the Standing Committee on the Judiciary, had made some progress therein, but not having gone through therewith, had directed their Chairman to report that fact to the Convention and ask leave to sit again.

There being no objection, leave was granted.

Mr. A. F. ALLEN—I move that the Convention do now adjourn.

The question was put upon the motion of Mr. A. F. Allen, and it was declared carried.

So the Convention adjourned.

TUESDAY, November 26, 1867.

The Convention met at ten o'clock A. M., pursuant to adjournment.

Prayer was offered by Rev. JAMES MAGEE.

The Journal of yesterday was read by the SECRETARY, and approved.

The PRESIDENT presented the memorial of certain citizens, asking for the abolition of the Regents of the University.

Which was referred to the Committee of the Whole.

Mr. FOWLER presented the memorial of certain citizens, remonstrating against the appropriation of public money to sectarian institutions.

Which took a like reference.

Mr. KETCHAM presented the memorial of certain citizens, asking for the abolition of the Regents of the University.

Which took a like reference.

The PRESIDENT laid before the Convention a communication from Dr. E. C. Wine, in relation to the State prisons.

Which took a like reference.

The PRESIDENT laid before the Convention the following communication from the mayor of the city of Albany:

MAYOR'S OFFICE, ALBANY, N. Y.,
November 25th, 1867.

Hon. WM. A. WHEELER, President of the Constitutional Convention:

SIR: I have the honor to transmit the inclosed resolutions, passed by the Common Council of the city of Albany, and would respectfully request that the same be laid before the Convention.

Respectfully yours,

GEO. H. THACHER, Mayor.

CLERK'S OFFICE:

COMMON COUNCIL, ALBANY, N. Y.,

IN COMMON COUNCIL, Nov. 22, 1867.

Resolved, That His Honor the Mayor, be authorized, in behalf of the city, to tender to the Constitutional Convention the use of one of the public halls, in case its present session should be prolonged so as to prevent its occupation of the Assembly Chamber.

Resolved, That His Honor the Mayor, be re-

quested to communicate the above resolution to the Constitutional Convention, and that he appoint a committee of five to make the necessary arrangements to carry the foregoing resolution into effect. Adopted.

I hereby certify the foregoing to be a correct extract from the minutes of the Common Council of the city of Albany.

GEORGE W. WARREN,
Clerk of the Common Council.

Which was laid over for future consideration.

Mr. EDDY called up for consideration the following resolution, offered by him on Saturday last:

Resolved, That on and after Tuesday next the roll of this Convention shall be called at the opening of the session on each day after the reading of the Journal, and all members absent without leave shall forfeit their pay for that day.

Mr. EDDY—It is patent to every member of this Convention that a large number of its members are, and have been from the first, habitually absent for weeks and months together, not only embarrassing those that are present and desirous to discharge the duties sacredly intrusted to them by frequently leaving them without a legal quorum, but also in violation of a sacred oath. It is well known also that some of these individuals occupy offices of public trust and profit, while others are pursuing a lucrative private business. Still, all, or nearly all (the honorable gentleman from Westchester being, I believe, the single exception) have drawn full pay for the whole time. But, sir, after all, the mere matter of pay is but a small consideration. If I could be honorably discharged from further responsibility connected with my duties in this Convention, and the trust imposed upon me, by merely relinquishing my claim upon the government for my pay, it would be a great relief, as well as a great financial benefit. The people, as they have a right, complain. How these gentlemen can satisfy their own consciences I am at a loss to imagine. It only remains for this Convention to discharge its duty touching this matter. I hope and trust the resolution will prevail.

Mr. CASE offered the following amendment: "And that all delegates having already received pay for services when they have been absent without leave of the Convention, be required to return the same into the State treasury."

Mr. AROHER—The matter of calling the roll each morning was under discussion by the Committee on Rules, and after mature consideration we came to the conclusion that it would be a needless expenditure of time; and we can all of us readily conceive that it would sometimes seriously impede the transaction of business. The matter of cutting off the pay is an entirely different question; and if the resolution is insisted upon I call for a division of the question, and that the vote may be taken upon that separately.

Mr. MORRIS moved that the whole matter be laid upon the table until the twenty-fourth of December next.

The question was put on the motion of Mr. Morris and it was declared carried.

The PRESIDENT announced the special order

of the day, being the report of the Committee of the Whole on the reports of the Committee on the Finances of the State and on Canals, and stated that the report had not yet been printed.

Mr. VERPLANCK—It is, of course, the fault of the printers and of the sergeant-at-arms that this report, which was made the special order several days ago for this day, is not printed and upon our files. They should see to it, that it may not occur again, for it is inexcusable. Still the Document No. 129, upon our files, contains most of the report, and I hope we shall proceed with the special order.

The SECRETARY read the first section as follows:

SEC. 1. The old canal debt of 1846, amounting on the first day of July, 1867, to \$3,258,060; the general fund debt, amounting at the time last aforesaid, to \$5,642,622.22; the canal enlargement debt, amounting at the same time, to \$10,807,000; and the floating debt loan, contracted under the provisions of chapter 271 of the law of 1859, amounting on the first day of May, 1867, to \$1,700,000, shall hereafter be known as the "canal debt," for the payment of which the canal revenues are hereby pledged; and the several sinking funds applicable to the payment of the said debts, together with the contributions to be made thereto and the income thereof, shall be known as the "canal debt sinking fund."

There being no amendment offered,

The SECRETARY read the next section as follows:

SEC. 2. After paying the expenses of collection, superintendence and ordinary repair, there shall be set apart and paid into the canal debt sinking fund, in each fiscal year, commencing on the first day of October, 1867, out of the revenues of the canals, the sum of \$2,418,000 to pay the interest as it falls due and redeem the principal of the several debts specified in section one of this article, until the several debts shall be fully paid or provided for; and the principal and income of said sinking fund shall be strictly applied to that purpose and to no other purpose or object whatever. If, in any fiscal year, there shall not be contributed from said revenues at least the sum of \$2,418,000, the deficiency shall be supplied by taxation the next year. The remaining revenues of the canals in each fiscal year may be applied by the Legislature to the improvement or completion of the canals, but shall at no time be anticipated or pledged; if not so applied they shall be and remain a part of the canal debt sinking fund. The tax authorized to be levied to provide for the sinking fund to pay the floating canal debt is hereby suspended after the first day of October, 1867.

Mr. DUGANNE moved to amend by striking out "at no time," in the fifteenth line, and inserting after the word "pledged," in the same line, the words "for an amount not exceeding eight millions of dollars"; so as to read, "but shall be anticipated or pledged for an amount not exceeding eight millions of dollars."

Mr. HATCH—I am very glad that this proposition to increase the discretion of the Legislature in relation to improvement of our canals should come from the city of New York. It is the ap-

proper place from which such a proposition should come, as that city is most benefited by the Erie canal and its citizens were the first to memorialize the Legislature for the construction of that work. This section, so far as it has gone, was suggested first by the gentleman from New York [Mr. E. Brooks]. He proposed that the surplus over \$2,000,000 should be appropriated for the improvement of the canals. It was then followed by the amendment or the proposition of the gentleman from Osoondaga [Mr. Andrews]. The same proposition, in substance, as is now offered by the gentleman from New York [Mr. Duganne], was presented by the gentleman from New York [Mr. Kivarts], who urged its adoption with his usual forensic power. Now, sir, I propose to amend the amendment now pending as follows, so that the section would read:

"The remaining revenues of the canal in each fiscal year may be applied by the Legislature to the improvement or completion of the canals, and shall at no time be anticipated or pledged beyond the sum which the revenues would repay within eighteen years."

The existing section provides for securing the public faith to pay the canal debt. This will quiet the nerves of many honorable gentlemen. I heartily approve of that section, as far as it goes in that direction. It goes somewhat further, and leaves a very limited, small discretion to the Legislature to apply the remaining surplus revenues, after providing for the public debt, to the improvement of the canals. This may be some \$500,000 or \$600,000 annually. This, in my humble opinion, does not meet the exigency of the case. It is too small altogether. The amendment which I now propose does not fix any amount, but it says that the Legislature may have a discretion to anticipate and pledge the revenues of the canal to an amount that will be repaid from the revenues in eighteen years. It is a very simple proposition and a very plain one. It allows the people, through their agents, the Legislature, a discretion to use the income of their own property to improve it in case they should consider it necessary. You considered the people competent to send you here—will you now say they are incompetent to manage their own affairs, and put a straight-jacket upon them? The Legislature has now, by the action in Committee of the Whole, been invested with a discretion—an unrestricted discretion—over the regulation of the canal tolls. They can reduce these tolls to any amount to meet the exigencies of commerce, in order to preserve the trade to the canals. The amendment which I now propose leaves a discretion to the Legislature to improve these canals, so as to retain the trade to the canals, and the canals shall be enabled to have some tolls, to be regulated by the constituted authorities. If you can trust the Legislature to regulate tolls, you certainly can trust them to make necessary improvements of the canals. The question comes now, in making a Constitution for twenty years, whether you will tie up these canal revenues so that the canals cannot be improved—an untried policy—experimental without progress. The policy of the State of New York has been a progressive policy—a pol-

icy of improvement. It is the traditional policy of the State. An experience of almost a half century has demonstrated it to be the greatest commercial and financial success of the age. The tonnage of a boat in the early days of the canal was only forty tons. It has been gradually increased by increasing the capacity of the canal, within forty years, up to two hundred and forty tons, with a proportionate reduction in the cost of transportation, and the increase of business in the same ratio has followed. This, I repeat, is the true policy of the State—the traditional policy of the State. If you leave this financial section as it now stands, unamended, you would stop in the mid career of our success on the canals; you would stop and not allow a necessary discretion here for the improvement of these canals. I do not intend to detain this Convention, but there are a few brief words in the message of Governor Marcy, in 1835, urging enlargement of the canals in order to cheapen transportation and provide for the increasing trade of the West, to which I wish to call the attention of this Convention, for it contains the true policy that was adopted and has been maintained in relation to the Erie canal.

"The extent of business on all canals is increased by the facility of transportation and a reduction of the expenses. By enlarging the capacity of the Erie canal, the cost of transportation will be diminished. The tolls are a considerable part of the expense. This subject has occupied the anxious attention of the canal board during the present year; and some of the beneficial results to which I have alluded, particularly the wide diffusion of trade into the western and south-western sections of the Union, are justly ascribable to the enlightened views of this board, and their judicious modification of the rates of toll. Previous to opening the canals last season, the tolls were reduced twenty-eight and a half per cent on most of the products of the country, and fourteen and a quarter per cent on merchandise. Notwithstanding this reduction, the amount of tolls received on the Erie and Champlain canals during the last season, is one million four hundred and sixty-four thousand two hundred and fifty-nine dollars and ninety-eight cents, which is two hundred and thirty-four thousand seven hundred and seventy-six dollars and fifty-one cents more than the receipts of the preceding year."

The result of the proposition, as laid down in his message of 1835, on this enlargement question, is that as you decrease the tolls of the canal—the cost of transportation—you increase the business of the canal in the same ratio. There is nothing better understood among commercial men, in regard to transportation, than the fact that as you increase the tonnage capacity of a vessel you decrease the cost of transportation. That has been proved on the Erie canal, and is proved in our lake commerce. The vessels on the lake five years ago carried about ten thousand bushels of grain. They now carry fifty or sixty thousand bushels, and it has decreased the cost of transportation one-third upon our lakes. The whole object of the enlargement and improvement of the canals, from their origin, has been to decrease the cost of transportation.

This was the statesmanship of the past, and if we are equal to the comprehension of this grave question, it will be ours to-day. Now, I hold that we have got to prepare to meet the rivalries in transportation around us—Pennsylvania, Virginia, Canada, or the New Dominion. This last is the most formidable rival, and has expended nearly one hundred and fifty millions in unproductive public works. Their object was to seize the control of the commerce of the West. It is not to be supposed that the British Canadian capitalists who have invested this amount of money are going to give up the contest to their American rival. They will renew it, and they are to-day at Ottawa, their capital, in Convention—or in their Parliament, waiting to see what the action of this Convention shall be—to see whether this Convention shall go on and improve these public works, or neglect their improvement. Our action here will determine their future policy. The growth and the increase of trade upon the Erie canal for the last twenty years indicates the necessity of having some provision for their improvement. I do not propose to detain the Convention by giving figures and statistics, but I make these statements upon my own responsibility, and I challenge contradiction. They are confirmed by tables in my minority financial report. In each decade, for the last twenty years, the tonnage of the Erie canal has doubled; the tonnage on the western lakes coming to the Erie canal has doubled; the revenues upon the Erie canal have doubled; the productions from the West have doubled; the population of the West has doubled, and if the same increase in population continues—which is conceded by every body—there will be a population there equal to seventy millions at the end of this century, occupying an undeveloped empire beyond the Mississippi, equal in extent to the eight Western States. In the presence of these financial and commercial results, I ask this Convention, as prudent men, whether they deem it wise to leave no discretion with the Legislature to make improvements to meet the demands of that increasing commerce of the west. Is it wisdom, is it the wisdom of a business life to do it? Is it the wisdom applied to any other carrying system in this country? Then again, I want to call the attention of this Convention to the fact that this Erie canal, in the economy of transportation, for the last five years, according to a statement that I hold in my hand, has saved to the people of this State, in the cost of transportation, \$57,790,000. That I say is saved to the people of this State, for every man who is familiar with the question knows that the bulk of the commerce on the Erie canal is composed of the necessities of life; that the Erie canal carries the wheat, the flour, the pork and the fuel, and it carries it to the poor men and poor women of the State; and that almost every dollar that you decrease the cost of transportation inures to the benefit of the consuming classes. They are the laboring classes, who have to pay for articles of consumption from their limited earnings, whilst the rich pay from their abundance. And the people of no State are so deeply interested in this transportation as the people of this State, who are consumers; for the State does not raise enough

to sustain the population for three months. I have said before, and I repeat it, that the managers of the carrying systems of this country, including Canada, are watching with intense interest the action of this Convention, to adapt their policy of improving their lines of transportation. The North-west is watching and determined to have a cheap water line of transportation to the ocean, and will have it. They will have it through the Erie canal or they will have it through Canada. No section of our country understands the value of a water line of transportation over railways so well as the people in the North-west. They have 18,000 miles of railway. They know what it costs them for railroad transportation, and it is to avoid that that they are improving their water line of transportation through the West—the Illinois canal to the Mississippi, the Fox and Wisconsin improvement—and they calculate that when this Fox and Wisconsin improvement is completed, they can transport wheat from the Mississippi to Lake Michigan at six cents a bushel, whereas now they are paying twenty-five cents a bushel. It is idle for gentlemen to say that we need not heed the clamors of the North-west. I can tell gentlemen of this Convention that the North-west is a political power in this country; it is an increasing power; and the time is not distant when they will control this government, and through the agency of the government they will create water lines of transportation to the ocean. They want cheap transportation and they will have it in some form or other. They have the political power and they will assert it. I did not mean, sir, to detain this Convention, as I have not furnished any statistics or authority to sustain my statements, and intended only to present a few most important considerations to the attention of the Convention; but I trust that I shall be pardoned; for I do not think it would be inappropriate that I should introduce here some views of one who is no longer with us. I speak of the views of the late Hon. David L. Seymour, of Troy. In his death, allow me to say, our canal system has lost one of its ablest advocates and the State of New York one of its noblest statesmen. All will recollect his last great speech here on this subject, and his words now come to us with the sanctity and solemnity of death; and they are to this very point, of the necessity of providing for the future improvement of these canals. He says:

"It is not a question of exact calculation how long we can stand still and wait for this growth of trade at the West; how long we can refuse to provide the accommodations demanded by us; whether we shall wait until the tide of increasing trade shall have risen to its height, and shall be beating at the very gates of commerce for the purpose of easy transit. No prudent man, no man who seeks the prosperity of this commerce, would ever desire that. He would look forward to the tide of trade, as it was coming; he would anticipate its arrival: he would with all proper appliances entice it this way, and, when it came, he would be prepared, with improved accommodations, to receive it, and carry it to its ultimate destination. Such was the policy of those who resolved upon and executed the enlargement of

the prism of the canal in 1835; such should be our policy now. And whether we have exactly reached that point, where the volume of produce coming from the West is found to press upon the capability of the canals or not, we are assured, as I shall show this committee, that it is soon to come. It is therefore, our true policy, to be ready to receive it. Sir, this trade is soon to come, and to come in such volume that we shall be compelled, if we do not prepare for it now, to permit it to be hampered, to be restricted of its rights, to be set back and driven upon and over other competing routes. Our plighted faith to the great West demands these improvements. Relying upon pledges given when our fathers projected and first opened the artery for the trade of the West, the pioneers of eight sovereign States larger than our own, planted themselves in the then wilds of our western territory, and have, by their industry and economy, made the great valley of the Mississippi to smile and blossom as the rose. But all this time their faces have turned to their homes and their kindred in the East with the love, the attachment and confidence of children. They have sought our marts of trade and business and social connection, and are now asking their continuance. Let us not say to them 'Your hopes and expectations are illusory; the avenue of trade and intercourse which seemed to unite us in trade and business and social relations must be forever closed.' Sir, I will not pursue this train of thought further. Should this Convention unfortunately adopt the proposition of the Finance Committee, and make no adequate provision for advancing and improving our canals, as the increasing trade of our country demands, I have no fear that the people will ever adopt this Constitution. No, sir, they know their interests, and I am persuaded they will protect them. They will never sanction by their vote a system which destroys the canals, and delivers the tax payers and the whole mass of our citizens, from Lake Erie to the Hudson river, over to the power of railroad corporations, to be erected upon the ruins of the grandest and most remunerative canal system the world ever saw. No, the good sense and patriotism of the citizens of this State inspires them to make still greater efforts to sustain their commercial supremacy. They yet see in the coming future the march of improvement. They hope for the early completion of that great national railroad enterprise which shall span this continent from the Atlantic to the Pacific. They look forward to the day, not far distant, when the trade of Asia, mingling with that of America, shall find its center at the city of New York; also the money power of the world shall no longer be seated in that little 'fast anchored isle,' but shall be located in the great commercial emporium of our own imperial State."

These were the words and enlightened views of a patriot and statesman. Although his voice will no longer be heard in the councils of our State, still I do hope that his recommendations may still have some influence upon this Convention in adopting a wise State policy for our canal system. It has been the constant effort of some members of this Convention to limit the consideration of the capacity of the Erie canal to the mere question of

lockages; the number of boats that could be squeezed through a lock in a certain number of minutes or hours instead of extending our views to the larger commercial and financial considerations which enter into this question, and which should decide our action. This is a narrow view of a great subject to limit its discussion to—

At this point the gavel fell, the gentleman's time having expired.

The PRESIDENT announced the question, to be on the amendment offered by Mr. Duganne.

Mr. DUGANNE—I offered the amendment upon the consideration that at some period in coming years, before the Constitution can be revised again, there may occur an exigency when it may be necessary, in order that the State of New York may be able to compete with other States or other interests, that an amount shall be raised for the enlargement or improvement of the Erie canal, which cannot be covered by a mere *pro rata* appropriation annually provided in this section. I therefore propose that the restrictions should be so far removed as to permit surplus canal revenues to be pledged at any time to an amount not exceeding eight millions of dollars to meet any extraordinary exigency that may occur. Those who oppose the more liberal policy of the friends of the canal on this floor—and when I say the friends of the canal I do not mean that any gentlemen here are more especially the friends of the canal than others, but simply the advocates of a more liberal expenditure of money for the improvement of our canals—those who oppose such liberal policy argued that it was necessary that the debts of the State should be provided for first, and we acknowledged it and agreed to it. They told us, also, that until these debts were paid or provided for annually, we ought not to ask for an appropriation for the further improvement of the canals; and we agreed to that likewise. But we never abandoned the principle; and when I say "we," I mean merely the advocates of more liberal expenditures; we never abandoned the principle or the understanding that at some time there might be a paramount necessity for a large amount of money, amounting to millions of dollars, to be raised by loan or otherwise, in order to meet some emergency by means not provided for in this section. The sum of six hundred thousand dollars per annum is supposed to represent the surplus revenues of the canal, a sum which may be wholly inadequate to meet such an emergency as I contemplate, requiring certain extensive canal improvements to be made in a given time, to meet the rivalry of some other great interest. I have no doubt myself that six hundred thousand dollars will always at least be the minimum of the surplus revenues of our canals; I hope, indeed, that this amount will represent scarcely a moiety of such surplus in the future, if these great internal works shall be properly cared for by their owners. And I wish here to allude to a remark made by some gentleman on the floor who took the opposite side of the question in Committee of the Whole, that canals are not able to compete with railroads, and could not be depended upon for revenues equal to the freight revenues of our railroad lines. The case of the Baritan and Delaware canal was intro-

duced as an illustration and it was stated that this canal could not pay, and was scarcely used when in competition with the railroad line parallel to it. It was asserted here that the Raritan and Delaware canal did not carry any large amount of freight—the maximum, I think, was specified at a low figure—and that it was always, therefore, a non-paying concern. Since the adjournment of the Convention, I have received from a director of the Camden and Amboy road—who is also one of the three directors of the Pennsylvania Central railroad, chosen by the city council of Philadelphia—a letter to which a postscript was added substantially as follows: "I am pleased with the grounds you have taken in reference to the canals in this State, and I wish to suggest here in this connection," said my correspondent, "the instance of the Raritan and Delaware canal. The Camden and Amboy road at the present time relies upon the revenues of the Delaware and Raritan canal to make its dividends"—the dividends which it annually makes to the stockholders. Formerly the case was the reverse, but at the present time the Delaware and Raritan canal is relied upon to make dividends, which the Camden and Amboy line is not able to make from its own earnings. Now, this proves that the canals steadily increase in their capacity of competition and while the railroad at one time may have overshadowed apparently by its revenues and freights the profits and capacity of the canals, yet steadily, in the future, as the people learn their true interests in transportation, the canals will assert their rightful supremacy over the railroads, and will not only be able to compete with them, but to make up the losses occasioned through incapacity of the railroads. I allude to this because it was distinctly stated in the argument from the other side that the Delaware and Raritan canal could not compete with the railroad. I have not much more to say upon this matter except to reiterate that my amendment is founded upon the supposition and upon the apprehension that at some time it may be necessary to raise the amount of eight millions of dollars, in order to complete within a given time, certain vital improvements necessary to enable our canals to compete with other canals and other interests in other States.

Mr. CHURCH demanded the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The amendment offered by Mr. HATCH was read in the following form: To strike out the words "for an amount not exceeding eight millions of dollars," and insert in lieu thereof the words, "beyond a sum which the revenues will pay within eighteen years," retaining the words "at no time."

Mr. S. TOWNSEND—I will ask the gentleman from Erie [Mr. Hatch] whether he considers his proposition any more favorable to the canals than the proposition of the gentleman from New York [Mr. Duganne]?

Mr. HATCH—I do not think it is. I will only say that the amendment I submit does not fix any amount at all. It merely leaves it to the discretion of the Legislature what amount may be expended from year to year, not exceeding the amount which they think the revenues will re-pay.

Mr. S. TOWNSEND—So I understand it; and I want to say to this body that, as I regard it, it is less favorable to the canals than the proposition of the gentleman from New York [Mr. Duganne]. The surplus revenue is estimated at six hundred thousand dollars a year, which the Convention will remember is some three or four hundred thousand dollars more than the actual surplus the past fiscal year. But even upon the basis that the revenues, after the pledges, will be six hundred thousand dollars, or will be assumed as such by the Legislature, the proposition of the gentleman from New York [Mr. Duganne] will put a larger fund into the hands of those who may carry on the enlargement of the canal than the proposition of the gentleman from Erie [Mr. Hatch]. For they can only gain a couple of millions of dollars by the proposition of the gentleman from Erie [Mr. Hatch], allowing the rate of interest to be six per cent upon ten millions of dollars, which would absorb the whole six hundred thousand dollars, and that would leave no sinking fund to cover the debt within the eighteen years. Those who favor, specifically and especially, the canal interest, should therefore vote against the amendment of the gentleman from Erie [Mr. Hatch], believing it not to be equal to the proposition of the gentleman from New York [Mr. Duganne].

Mr. HATCH—Will the gentleman himself support the amendment of the gentleman from New York [Mr. Duganne]?

Mr. S. TOWNSEND—The gentleman asks a question of another gentleman who has never dodged a vote in his life; who is happy to say that in this house and in this chamber, in which chamber he has probably voted more times than any other gentleman in it, that he has never dodged a vote, and never walked out when the ayes and noes were called. To return, sir: the gentlemen assume that the railroad competition is not a serious one. The gentleman from New York [Mr. Duganne] draws a comparison between the Delaware and Raritan railroad and the Delaware and Hudson canal, and says that, so far as the success of the Delaware and Raritan railroad is concerned, the canals have finally triumphed. I would ask my friend from that locality, who is *en fait* on that subject and understands it thoroughly [Mr. Hardenburgh], to state, if he is here, whether the dividends of the Delaware and Hudson canal have not arisen from the fact that the company owned coal mines which have added largely to their revenues; and whether the naked transportation, at a fair price, upon coal or any other article, would have given revenues as ample. I think there is no point in that argument of the gentleman from New York [Mr. Duganne].

Mr. DUGANNE—I would inform the gentleman that I was speaking entirely of canal revenues upon transportation to New York.

Mr. S. TOWNSEND—That is not the question. The question is whether or not the profits upon the transportation upon the Delaware and Raritan railroad, running between the Delaware river and New York bay, as evinced by its dividends, stand in indisputable contrast, as the gentleman said, with those upon the Delaware and Hudson canal, whose dividends have arisen largely from profits

on coal. That is the point. But as I was about to say when I was interrupted and called to order at the commencement of our session, on the grounds of the two questions of railroads and canals being not connected, I am a believer in the competition of railroads, and have been for the last thirty years; and within the next twenty years I believe that competition will be found more serious than many gentlemen contemplate. The railroads continue through the whole year, and they do not admit of the stealings which we find our canal system is liable to. They are under better management, and they declare better dividends than our canals do under similar circumstances. I was about saying, then, that some twenty years ago I had an opportunity in England to learn the fact that so long ago as 1846, before the improvements recently made, the capabilities of the English roads were adequate to move a ton of weight for a half-penny, or one cent of our money, per mile, which we know would be about thirty-four cents for a barrel of flour from Buffalo to New York, provided there were no tolls. That information came to me direct from a member of the board of trade, who had charge of the subject at that time. More recently, within the last winter—and I am sorry that these data are unofficial—at a convention of the railroad interests in London, it was stated that such had been the improvement of railroads, and such had been its effect upon the cost of transportation, that that cost was reduced to the insignificant item of nineteen-hundredths of a penny per mile, a fifth of a penny per mile. So that from 1846, when the transportation was at the lowest, one cent a mile, the improvements in railroads and the progress in the course of twenty years, had reduced the cost to one-fifth of that amount. That was stated in a convention—for conventions are the order of the day there as well as here and everywhere—a convention of railroad interests in London, that the movement of a certain class of heavy merchandise could be made over some of the railroads for one-fifth of a penny per ton per mile, less than one-half the surprisingly low amount named in 1846. With these facts and figures—because after all they are the things that decide a question like that before us—I cannot accept the idea thrown out that railroads are not serious elements of competition with canals; and gentlemen who want to give every facility to the great West, and every facility to localities on the line of our canals, should not be charged with any hostility to them when they hesitate about plunging the State into so large an amount of taxation, and therefore vote for rejecting both these amendments. But I merely rose, in the first instance, to ask the gentleman from Erie [Mr. Hatch] whether he considered his amendment more favorable than the other proposition, and to say that I did not so consider it for I do not consider that it will amount to \$8,000,000 even with the surplus revenue of \$600,000, and we may find, under some arrangement of the railroads, the transportation of merchandise upon our canals very much reduced, and it is now less than a moiety of that carried through the State. It is admitted now that the railroads carry a larger amount than the canals; and it may be found that instead of having a surplus

revenue we may again have to resort to taxation to support our system of canals. I consider the proposition to raise \$8,000,000 more favorable to the canals than the proposition to raise an amount which the surplus revenues of the canals will repay within eighteen years.

Mr. DUGANNE—The gentleman from Queens [Mr. S. Townsend] misstated entirely my position with reference to the illustration which I adduced. I did not claim that railroads are not a serious competitor to canals, if canals are not fostered. I merely stated this fact, that the Delaware and Raritan canal, twenty years ago, as contrasted with the Camden and Amboy railroad, was a non-paying institution, but that, through a wise conception of the necessities of the people evinced by the Camden and Amboy railroad company, recognizing the fact that the people desired to transport in bulk on their Raritan canal, they have given the facilities of steam and increased capacity for transportation to that canal, and they find as the canal capacity increases the canal revenues increase; and now having fostered this Raritan and Delaware canal to the extent of its being a liberally paying work, they find they are benefitted in the fact that the dividends of the whole company, including the railroad interest, are derived now largely from the earnings of the canal. I therefore cited this fact, or illustration, as an argument that if the State of New York shall liberally foster the Erie canal, improve its capacity, and extend its means of transporting the products of the State and of the country in bulk, it will be found hereafter that in the same ratio the canals will increase in their revenues; and that every cent and every dollar invested in improving our canal property, is invested in a sound, paying speculation, just as it was found to be in the case of the Delaware and Raritan canal.

Mr. S. TOWNSEND—I understood the gentleman to refer to the Delaware and Hudson canal. It seems I was mistaken in that.

Mr. HATCH—On reflection I am inclined to withdraw the amendment that I presented, so that the Convention may vote on the amendment presented by the gentleman from New York [Mr. Duganne]. The amendment which I proposed, might seem to some, to be a little indefinite; and as the amendment which he proposes, seems to meet with some favor, with some members of the Convention, on the ground that the sum is specified, I withdraw mine. His amendment merely gives the Legislature a discretion to borrow eight millions of money; and the question is very a simple one, and a very plain one that comes to this Convention—whether they are willing to intrust the Legislature with that discretion—whether they are willing to intrust the people to manage their own estate and appropriate some of its money to improve that estate. I did not propose to detain the Convention. All I desire is that we shall have a square vote on it, and I see that seems to be the indication of the intention of the Convention. I shall therefore withdraw the amendment.

There being no objection the amendment was withdrawn.

Mr. E. BROOKS—I move to amend the amendment of the gentleman from New York [Mr.

Duganne], so as to strike out "eight millions" and insert "two millions," which is in harmony with the amendment I introduced on this subject when it was in Committee of the Whole. I wish to make a single remark upon the question now pending. I desire, as every delegate present must, to give an intelligent vote upon the amendment now pending, and upon every article of this financial question. I realize, as strongly as does the gentleman from Erie [Mr. Hatch], the great competition in regard to the transit of the products of the West to the seaboard. I see, as he sees, a disposition to complain of a lack of facility during certain periods of the year, for the getting of their products to market. As a citizen of New York, and especially as a member of this Convention, I desire to do nothing which shall arrest any of the commercial interests of this great State. At the same time, as I said in Committee of the Whole, I also realize the fact that there is growing up in this country so much interest in railroads, so much competition in consequence of them, and so much expenditure upon them, as to make me believe that for all time to come, railroads will be large competitors with the canals in the transit of goods to the sea-board. I think I demonstrated satisfactorily to every gentleman who did me the honor to listen to me, that in Belgium and Holland, railroads have revolutionized material interests entirely, and although canals are so admirably adapted to that flat country, and have been improved almost from time immemorial, the interests of the canal trade have been completely changed. Nevertheless, I had rather lean upon the side of what may seem to be the general commercial interests of the State, by extending a proper competition to the canals, and by limiting the power of the Legislature in the expenditure of money, so far as anticipating, to a limited extent, what may be the canal revenues of the State. Therefore, consistently with the proposition I made in Committee of the Whole, I move that the eight millions be reduced to two millions.

Mr. CHURCH—I have no inclination to enter into a discussion of the financial question. I think sufficient of the time of the Convention has already been occupied with debate upon it. I hope the amendment of my friend from Richmond [Mr. E. Brooks], as well as the original proposition, will be voted down. The system of finance which has been adopted by the Committee of the Whole, although not all I desire, yet, as a whole, is one which I can support. It is harmonious in all its parts and sound in principle. It provides for the payment of the existing debts; forbids the incurring of debts in future, and allows the Legislature to use the revenues of the canals, annually, as they accrue, for the benefit of the canals. We provide, in the first place, that the sum of \$2,418,000 shall be set apart in each fiscal year to pay the canal debts. Then we provide that the surplus over and above that sum may be used by the Legislature for the improvement of the canals during the period this debt is being paid. After this debt is paid, we require, a reimbursement to the treasury of the sums which have been advanced for canal purposes by taxation; and when these sums are reimbursed

to the treasury, it is competent for the Legislature to re-appropriate them to the canals or use them for any other purpose from year to year, but we forbid their being pledged. The principle adopted by the committee was to prohibit, under any circumstances, pledges of the revenues, but to leave the Legislature to expend the revenues as they accrue. The amendment interferes with this. It provides for anticipating the revenues by pledging for a sum, according to the original proposition, of eight millions, and, according to the amendment, of two millions. And it authorizes these revenues to be pledged for an uncertain and indefinite period; the amount of money borrowed upon them to come in prior to the reimbursement to the treasury by taxation of the advances made to the canals. To that extent it violates the express provisions of this Constitution, that, after the present debts are paid, the advances shall be reimbursed to the treasury. I deny that such a measure is beneficial to the canals; but I do not propose to go into the argument. If the revenues reach the sum which these gentlemen claim, there will be over and above two millions four hundred and eighteen thousand dollars; the sum of four, five or six hundred thousand dollars every year to expend for the improvement of the canals. They estimate the net revenues at three millions of dollars. If they are correct, there will be about six hundred thousand dollars every year to expend for the improvement of the canals.

Mr. HATCH—I wish to ask the gentleman from Orleans [Mr. Church], what he estimates the necessities of the Champlain and Erie canals to be, if they are improved and put in condition for navigation. He has admitted, and every body knows that the Erie canal is not in good navigable condition. And I wish to state a fact, here upon my own responsibility, that the—

Mr. CHURCH—Is my time going on?

Mr. HATCH—I desire to say merely, that on account of the bad management, and consequent bad condition of the Erie canal, I have no doubt we are paying six cents a bushel more on wheat shipped from Buffalo to Troy, than we would if the canal was in good condition. Therefore, to my mind, there is a necessity for an immediate improvement.

Mr. CHURCH—I have no admission to make in relation to the management of the canals, either one way or the other. I do not think, myself, that the canals are in such bad navigable order, as the gentleman seems to suppose. But if such is their condition, let us have better management; let us keep the canals in better repair, as we have more power to do; let us manage so that they will be in good navigable order. I was going on to say (and I have only a word on this subject) that there will be, if the gentleman on the other side of the question estimates the revenues correct, five or six hundred thousand dollars every year to spend for the improvement of the canals, until the canal debt is paid; then the whole revenues are to be paid into the treasury, subject to the discretion of the Legislature whether they will appropriate them for the canals or other purposes. I say, that is all any gentleman can reasonably ask. We have, in addition to that, provided in this Constitution,

a means of anticipating the revenues, of running in debt, by submitting the question to the people. And it is an easy thing to alter the Constitution itself. We have gone over that ground entirely. To insert this amendment, where it is proposed to be inserted, would interfere with the system which the committee has adopted in relation to finance.

Mr. BELL—It occurs to me these amendments seek substantially the same end, but without the safeguards provided in the report of the Committee on Canals. The amendment of the gentleman from Orleans [Mr. Church] names the precise sum. But while the sum agrees with that reported by the Committee on Canals it is reached in an entirely different way. The report of the Committee on Canals did not require the anticipation of any sum beyond that of two millions of dollars, and that not until the year 1872; and proposed an enlargement of the canals by an appropriation of eight millions of their surplus revenues after providing for the payment of the State debt as it became due, with interest thereon annually. Now, inasmuch as that proposition failed to receive the assent of the majority of this Convention—and the question was thoroughly discussed, it occurs to me that we had better not open that question again and spend weeks of time upon it when we were clearly in opposition to the opinion of the Convention at the time the matter was decided. I will be unable to favor either the amendment of the gentleman from Erie [Mr. Hatch], or the amendment of the gentleman from Richmond [Mr. E. Brooks], for the reason that I believe them to be in opposition to the opinion of the majority of the Convention, and for the reason that they do not provide safeguards in the expenditure and in the mode of reaching that desired result, the improvement of the Erie canal, as did the report of the committee. If we adopt the amendment proposed by the gentleman from Erie [Mr. Hatch], it will necessitate the changing of the whole article, and the subsequent articles of this section.

Mr. VERPLANCK—I would like to suggest to the gentleman that the amendment of my colleague [Mr. Hatch] is withdrawn, and it is not under consideration.

Mr. BELL—My remarks will apply equally to the amendment of the gentleman from Richmond, [Mr. E. Brooks]. I have ever held to, and have advocated that view as long as I had a seat in a legislative body, or a position which might give my views any significance, the importance of adhering strictly to the provisions of the present Constitution, and to keep in good faith every obligation the State has incurred. The report of the Canal Committee did this substantially and fairly, and then pledged the surplus revenues to the improvement of these works. The present article as adopted does substantially the same thing; but in a different manner. It not only pays all the obligations as they become due, but it provides a sinking fund that will pay them; leaving it at the discretion of the Legislature whether they shall be paid sooner or later. There is a large amount of State fund, particularly that in the general fund debt, which it is optional with the Legislature to pay at an earlier or later day. Now, I am of the

opinion that we had better adhere to the report as adopted; or take up the report of the Canal Committee and adopt that. It is perfect, as I can see, in its provisions. It provides for the improvement of the Erie and other canals that need improvement without borrowing money, but from their surplus revenues. I shall, therefore, be obliged to vote against the amendment of the gentleman from New York [Mr. Duganne], as well as the amendment of the gentleman from Richmond [Mr. E. Brooks]. I say this much in explanation of that vote.

Mr. CHURCH—I call the ayes and noes on the question.

Mr. HATCH—I do not intend to detain the Convention, for in the report I made to this Convention, I submitted my views on this question. But I wish to refer to a statement which the gentleman from Orleans, [Mr. Church], has made (and it is only a repetition of what he stated at various times during the discussion in Committee of the Whole), that it was a very easy thing to get an amendment through the Legislature submitting to the people whether they would agree or not to a loan for the improvement of the canals. Now, no gentleman knows better than he the difficulties attending such an effort. I have had some experience, myself, in that very matter. I think we were five years before we succeeded in getting the amendment to the people in 1854. If I recollect aright the gentleman from Orleans [Mr. Church] presided over the Senate when we came there. Fifteen or sixteen senators left their seats in order to avoid an amendment that was urged upon the Legislature. Then it was the nine million bill was passed. I am free to say I supported the nine million bill, although I opposed the ratification of corrupt canal lettings under it. After that was disposed of, with a year or two of struggle, then we had another struggle with the Legislature before we could get the amendment to the people. It took in all about five years before we accomplished it. When we did go before the people with the question of improving the Erie canal (and which object I believe is still in the hearts of the people), they voted for it almost unanimously. But the difficulty is to go through the Legislature in the face of the railroad power.

Mr. ARCHER—Believing, as I do, we shall eventually submit to the people a Constitution worthy of their support, and one which will be adopted, I am desirous as far as may be, of providing for its continuance. I am not in favor of tying up the legislation of the State by provisions so stringent that, at no distant day, an amendment to the Constitution will be absolutely necessary. We all recollect that in the Convention of 1846 the anti-internal improvement theory, then called the debt paying policy, prevailed to a great extent. The Legislature was tied up effectually within certain prescribed boundaries. But such were the necessities of commerce, so manifest were the wants of the State, that but a few years intervened before an amendment to the Constitution was imperatively demanded. There was great difficulty experienced, when the amendment was made, in squaring it with the opinions expressed in the

Convention of 1846, and with the theories entertained at the time it was framed, so as to have it work well. In that amendment of 1864 was the germ of very much if not all of the trouble we have since experienced in regard to the management of the canals. But I will not detain the Convention with any protracted remarks in regard to this policy in general. I am in favor of leaving the question, as far as may be, to the discretion of the Legislature. I shall cheerfully support the amendment of the gentleman from New York [Mr. Duganne], believing, as I do, that the power will be safely lodged in the hands of the Legislature. After the able and exhaustive remarks of the gentleman from Onondaga [Mr. Alvord] in opening the discussion in regard to the canals, it would ill become me to enter upon this field of discussion. He has said all I could say and far better than I am able to say it. We who live immediately on the line of the canals do not seek the further enlargement of the canals for our own immediate purposes. It is as citizens of the State, taking an interest in the prosperity of the entire State, that we advocate the most liberal policy in regard to the improvement and enlargement of the Erie and other canals. The enlargement of the Champlain canal is already needed. The exigencies of trade may, I believe will, demand in a very short time, a further enlargement of the great artery extending to the West, the Erie canal. Sir, it has been clearly demonstrated that canal transportation is cheaper than railroad transportation, and we ought to be very careful how we limit the Legislature in its future efforts to protect and cherish the commerce of this great State. I hope the amendment of the gentleman from New York will prevail.

Mr. VERPLANCK—I hope the gentleman from Richmond [Mr. E. Brooks] will withdraw his amendment and let us have a vote upon the amendment of the gentleman from New York [Mr. Duganne].

Mr. E. BROOKS—I will do that; but it puts me under the necessity of voting against the amendment. I cannot vote for the amount of eight millions of dollars.

Mr. VERPLANCK—We can just as well take a vote on that proposition afterward, if the amendment of the gentleman from New York is defeated. I feel, Mr. President, that this Convention is very much in the condition of the administration of the general government in 1861. When the rebellion broke out, the President of the United States called for seventy-five thousand troops. It was felt by many in all parts of this country, and I was one of the many, that a great mistake had been made; that three or five hundred thousand troops should have been called out at once to put down the rebellion. And, although no one was to blame, it was probably the greatest mistake ever made upon this continent that this number was not called out. It would have saved a vast amount of the blood and the treasure of the country. I feel that this Convention is making the same mistake in reference to the canals, and that in less than five years we will be utterly surprised and ashamed that we did not consider this vastly important question—the question of

whether or not the State of New York should secure the carrying trade of the great West. I do not propose to discuss the question of the amount of cereals produced by the great West; nor do I propose to speak to-day of the insufficiency of canal accommodations to carry speedily and cheaply those cereals to the sea-board. I have consumed sufficient of the time of the Convention on this subject; nor do I propose to discuss to-day the question of cut-offs from your Erie canal proposed by the legislation of the Dominion of Canada. I have alluded to these things before. Neither do I propose to discuss the question of the great channels of communication that are about being opened from the Mississippi valley to our lakes. But I believe, as much as I believe I am here to-day, that the amount of cereals demanding transportation through our State will be so great that every member of this Convention will be astounded and ashamed that he was not able to appreciate the subject while a member of this Convention. I do not believe this Convention can do enough for the canals of this State. I cannot believe any man, even were he the wildest visionary in the Convention, or in the State, can appreciate the importance of the subject. I had the honor to propose an amendment somewhat similar to that now proposed, when the subject was in Committee of the Whole. I scarcely hope that this amendment will succeed to-day; yet there is no reason why it should not succeed. This year the surplus revenues of the canals will be five or six hundred thousand dollars. Next year it will be eight hundred thousand dollars. Thus every year during the eight years in which it is to be paid the debt will become less. Now, if we are to have six hundred thousand dollars this year, and eight hundred thousand dollars next year, and so running down, when the eight years have expired, the canal revenues will have almost equaled the eight millions of dollars.

Mr. E. BROOKS—Will the gentleman allow me to answer his question?

Mr. VERPLANCK—Certainly.

Mr. E. BROOKS—Because it is impossible to carry it through the Convention.

Mr. VERPLANCK—I agree with the gentleman, believing that the Convention are not awake to the importance of the subject; yet I want to record myself as voting for the eight millions. If that fails, I shall have to be content with the proposition of the gentleman from Richmond [Mr. E. Brooks], and accept the two millions.

The question was announced upon the adoption of the amendment offered by Mr. E. Brooks.

Mr. E. BROOKS—On that proposition I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered, and the amendment was rejected by the following vote:

Ayes—Messrs. Barker, E. Brooks, Cooke, Duganne, Ely, Field, Fuller, Goodrich, Hatch, Landon, C. E. Parker, Seaver, Verplanck—18.

Noes—Messrs. A. F. Allen, C. L. Allen, Alvord, Archer, Armstrong, Artell, Baker, Ballard, Beadle, Bell, Bickford, Bowen, E. P. Brooks, E. A. Brown, W. G. Brown, Carpenter, Casady, Chesebro, Church, Conger, Corbett, Cur-

tis, C. C. Dwight, Eddy, Endress, Flagler, Folger, Fowler, Francis, Gould, Graves, Hadley, Hale, Hand, Hadenburgli, Harris, Hitchcock, Houston, Jarvis, Ketcham, Kinney, A. Lawrence, M. H. Lawrence, Livingston, Loew, Ludington, Magee, McDonald, Merwin, Miller, More, A. J. Parker, Pond, President, Prindle, Prosser, Reynolds, Rogers, Root, Roy, Rumsey, L. W. Russell, Silvester, Smith, Spencer, Stratton, M. I. Townsend, S. Townsend, Van Campen, Wake-man, Wales, Williams—72.

Mr. KETCHAM—I move to strike out "eight" and insert "five."

The question was put on the amendment offered by Mr. Ketcham, and it was declared lost.

The question then recurred on the amendment offered by Mr. Duganne.

Mr. DUGANNE—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered, and the amendment was declared rejected by the following vote:

Ayes—Messrs. Alvord, Arober, Axtell, Barker, Bickford, Bowen, E. P. Brooks, Duganne, Ely, Field, Flagler, Fuller, Hatch, Hitchcock, Ketcham, Lea, McDonald, Pond, Prosser, Root, Stratton, M. I. Townsend, Verplank—25.

Noes—Messrs. A. F. Allen, C. L. Allen, Armstrong, Ballard, Beadle, Bell, E. Brooks, E. A. Brown, W. C. Brown, Carpenter, Case, Cassidy, Chesebro, Church, Conger, Cooke, Corbett, Curtis, C. C. Dwight, Eddy, Endress, Folger, Fowler, Francis, Goodrich, Gould, Graves, Hadley, Hale, Hand, Harris, Houston, Jarvis, Kinney, Landon, A. Lawrence, M. H. Lawrence, Livingston, Loew, Ludington, Magee, Merwin, Miller, More, A. J. Parker, C. E. Parker, President, Prindle, Rathbun, Reynolds, Rogers, Roy, Rumsey, L. W. Russell, Seaver, Silvester, Smith, Spencer, S. Townsend, Wales, Williams—62.

Mr. S. TOWNSEND—I would like to ask the gentleman from Orleans [Mr. Church] why he omitted the word "equitable," which was used in the Constitution of 1846, in relation to taxation for deficiencies in the trust appropriation?

The PRESIDENT—The Chair will inform the gentleman from Queens [Mr. S. Townsend] that that inquiry is not now in order.

Mr. S. TOWNSEND—I move to insert the word "equitable" immediately before the word "taxation" wherever it occurs in the second section. This is a provision which was in the Constitution of 1846, and I see no reason for leaving it out of the Constitution we are framing here. It is desirable that the taxation put upon the people shall be equitably imposed and that the moneys drawn by them shall be equitably drawn; and the people of those counties, the county of Queens, the county of Ontario, the county of Dutchess, and the other counties in which property is assessed at value approximating to its real value, will be particularly benefited by this provision, which will prevent their paying an unjust share of the taxation.

Mr. GRAVES—Will the gentleman yield a moment?

Mr. S. TOWNSEND—Yes; for the gentleman to make an inquiry.

Mr. GRAVES—Well, I would like to ask if "taxation" does not mean *equitable* taxation?

Mr. S. TOWNSEND—I should like to inquire of the gentleman if it does? [Laughter.] At all events I propose to put the word in here.

The question was put on the motion of Mr. S. Townsend, to insert the word "equitable" before the word "taxation" wherever it occurred in the second section, and it was declared lost.

Mr. CHURCH—There is a formal amendment which I think is necessary in this section. Instead of the 1st of October, 1867, it should read "the 1st of October, 1868."

There being no objection, the section was amended as suggested.

Mr. BICKFORD—I have an amendment that I wish to offer to the second section. It is to add after the word "canals," in the fifteenth line, the words "or for other purposes." As the section now stands, Mr. President, the Legislature is authorized to give the surplus revenues only in two directions, either to the improvement or the completion of the canals, or to increase the sinking fund for the extinction of the debt. I deem it unwise to thus restrict the action of the Legislature, and the amendment that I offer will have the effect to leave it discretionary with the Legislature either to apply the money to the improvement or the enlargement of the canals, or to increase the sinking fund, or for any other purpose or purposes which, in their judgment, the well-being of the people of the State shall demand. It may be that there would be a surplus of an amount which it would not be worth while to apply to the improvement of the canals, and which it might not be desirable to apply to a sinking fund, while there might be a call for its use in another quarter; if so, it should be left to the Legislature to make such disposition of it as the public good shall require, and their power should not be restricted to disposing of it in these two particular directions which are pointed out in this section. I will not detain the Convention by any extended remarks on this subject. When this matter was up in Committee of the Whole it was discussed fully, and I wish now that there should be a vote of the Convention upon it, and I would like the ayes and noes to be taken on that vote.

Mr. ALVORD—This was a matter of controversy between the Committee on Canals and the Committee on Finances, the Committee on Canals desiring that this money should go into the sinking fund until this debt should be entirely paid, and the operation of it is this: that in the event of its going into the sinking fund and being applied to the canals, and by that means increasing the funds of the canals, it will the sooner pay the debt, because whenever the sinking fund shall be sufficient by these provisions to pay the debt, then the contributions shall cease, and this money will go directly into the treasury. With this explanation, I will leave this subject, hoping the amendment proposed by the gentleman from Jefferson [Mr. Bickford] will not prevail.

A sufficient number not seconding the call the ayes and noes were not ordered.

The question was then put upon the amendment of Mr. Bickford, and it was declared lost.

Mr. BELL—I wish to offer an amendment to this second section, to insert after the word "taxation," in the twelfth line, the words "when-

ever such deficiency cannot be justly obtained by a deficiency loan, not to extend beyond six years." I am of opinion that we should not resort to taxation to make up canal deficiencies, unless it is clearly shown that they can not be made up by anticipating the revenues of one, two or three years. The people are already sufficiently taxed, and I am of opinion that we should not provide for any more direct taxation, unless there is an urgent necessity. I think that this may have been offered in some form in Committee of the Whole, and I am still of the opinion that whatever deficiency there may be in making up this sum in any certain year may readily be supplied by a deficiency loan.

Mr. PROSSER—I move to further amend by striking out entirely the paragraph relating to taxation. I think it is unnecessary to tax the people of this State to accumulate a fund of ten millions of dollars up to the year 1872 not required to pay any portion of the principal of the canal debt. In a year of dearth, to be sure, the revenue may come short of \$2,400,000 net: but what of it? It is not material to the people of this State that this precise sum should be raised, for it is not material that the debt should be paid in a specified time—not so material at any rate as that the people should be inflicted with this needless tax. Therefore I propose to strike out that portion which relates to taxation.

Mr. VERPLANCK—This matter was discussed so much at length in Committee of the Whole, and the conclusion arrived at so unanimously, that I trust and hope that the Convention will not interfere with it, but will leave it where the Committee of the Whole left it. I think we shall find ourselves at sea if we attempt to change or alter this section, as proposed either by the gentleman from Jefferson [Mr. Bell], or my colleague from Erie [Mr. Prosser].

The question was put upon the amendment offered by Mr. Prosser, and it was declared lost.

The question recurred on the amendment of Mr. Bell, and it was declared lost.

There being no further amendments proposed to the second section, the SECRETARY proceeded to read the third section as follows:

Sec. 3. After the debts specified in section one are fully paid or provided for, according to the provisions of section two, the remaining revenues of the canals, after paying the said expenses of collection, superintendence and ordinary repairs, shall in each fiscal year be paid into the treasury of the State to pay the amount advanced since 1846, for canal purposes by taxation, until the whole amount so advanced, with interest at five per cent per annum, shall be fully paid, and until any amount hereafter advanced for canal debts or other canal purposes, with interest thereon at five per cent per annum, shall be fully paid, and the moneys so paid into the treasury, may from time to time be appropriated by the Legislature for the improvement of the canals, or for such other purposes as they may deem proper. But the said moneys shall at no time be anticipated or pledged.

Mr. ALVORD—My recollection in regard to that section is that it has no effect, as it was finally determined upon in Committee of the Whole. A very large amount of discussion was

had in reference to the question whether the section, as it now reads, did or did not necessitate the payment of the entire \$18,000,000 into the treasury, and no portion of it to be appropriated for the canals or any other purpose. So, in order to carry out what was the intention of the committee, and what should be the intention of the Convention if they agreed to the report, I propose to amend this section by striking out all after the word "paid," in the tenth line, down to and including the word "Legislature," in the twelfth line, and inserting instead the words "but nothing herein contained shall forbid the appropriation by the Legislature of said moneys, from year to year, as they are paid into the treasury, for the canals and for such other purposes as they may deem proper."

Mr. CHURCH—I think the gentleman from Onondaga [Mr. Alvord] will see that amendment is quite unnecessary. I understand the point to be that, under the section as it now stands, there may be a doubt as to whether the Legislature can appropriate any part of these moneys until the whole is paid in.

Mr. ALVORD—That is the doubt still remaining on my mind.

Mr. CHURCH—Now, let me call the attention of the gentleman from Onondaga [Mr. Alvord] to the twelfth line, which says that "all the moneys so paid into the treasury may, from time to time, be appropriated." It seems to me that nothing can be plainer than that, by this section, the Legislature have power at any time to appropriate this money when it goes into the treasury, and I think these words were put in for that purpose.

Mr. ALVORD—I take it that a matter of this kind should be construed in whole and not in parts. Look at the seventh line and you will see that it reads "until the whole amount shall be fully paid." To avoid that difficulty in regard to the matter, I think the section ought to be amended as proposed, and I trust the gentleman from Orleans [Mr. Church] will consent to that amendment.

Mr. CHURCH—I would not object to the amendment, but it seems to me the intention is perfectly clear as the section now is. Payment is required to be made until the whole amount is paid; that is as to the payment; and then the Legislature "may" appropriate this money for canal purposes.

Mr. ALVORD—It will be still stronger and better if the gentleman would strike out "and," in the second line, and insert "but."

Mr. BARKER—I would ask the gentleman from Orleans [Mr. Church] if, in his judgment, the Legislature can make an appropriation of these moneys before they are actually paid into the treasury, or must that legislation follow the payment into the treasury? I think it should be so that the Legislature can anticipate the payment.

Mr. CHURCH—That question was fully considered in Committee of the Whole, and the last of this section was adopted with a great deal of unanimity. I do not know of any one principle that was agreed upon with more unanimity than the principle that these revenues shall not be anticipated by the Legislature.

Mr. PROSSER—I think the gentleman from

Onondaga [Mr. Alvord] must misunderstand. If I understand the amendment that he now proposes, it entirely neutralizes the effect of the latter portion of the proposed section, for in that section the remainder of the revenues are appropriated for the improvement of the canals, or are pledged to go into the sinking fund. I think, sir, that this section as it is, would be in conflict with the latter portion of the second section, and not less in conflict as proposed to be amended by the gentleman from Onondaga [Mr. Alvord]; for, in the latter portion of the second section, it is provided that the remainder of the revenues are to be appropriated by the Legislature for canal purposes, or to go into the sinking fund, viewing that latter part as mandatory. In the next section it says "after the debts are paid;" there is no reference to this remainder whatever; but after the debts are paid or provided for, all the revenues are again to be disposed of by the Legislature for canal purposes or any other purposes, as they think proper. I therefore submit, Mr. President, that the gentleman from Onondaga, [Mr. Alvord], if he intends to avail himself of the latter portion of the second section, had better strike out the words "for other purposes."

The question was put on the amendment proposed by Mr. Alvord, and it was declared lost.

Mr. ALVORD—I move to strike out the word "and" in section eleven, and insert the word "but."

The question was put on the amendment proposed by Mr. Alvord, and it was declared adopted.

Mr. CHURCH—I move to amend this section by inserting, after the word "taxation," in the sixth line, these words, "amounting, on the first day of July, 1867, to \$1,872,089.68. This is the amount, at five per cent simple interest, on the first day of July, 1867, and it seems to me, that upon every consideration of certainty and exactness which should characterize a Constitution, we should insert the amount, so that there shall be no further difficulty upon the subject, and upon this proposition I call for the eyes and noses.

Mr. ALVORD—We had a discussion in regard to this matter that I do not propose to repeat. I think that we showed clearly and conclusively to the minds of the members of this Convention, or to their convictions, that the statement made in 1848, was a statement which has not been borne out by the actual figures in the departments. Now, in regard to this amount of \$18,000,000, stated by the gentleman from Orleans [Mr. Church] we differ, and differ materially. Some of us thought, and thought rightly, that there have been appropriations made from the canals to the general fund of the State, which should be given credit for reducing those eighteen millions considerably; and under these circumstances, it seems to me proper that this matter should be left, as we have left it, to be determined by the results as they shall appear in the fiscal offices; and I think that we should not undertake, with so much conflict of opinion, to state this amount affirmatively, and without a conviction, in the minds of the majority of this Convention, that this is the true amount. I trust that the gentleman will consent, and that the Convention

will consent, to leave it where it was left by the Committee of the Whole.

Mr. CHURCH—I shall not go over the discussion again. I agree with my friend from Onondaga, [Mr. Alvord] that we discussed that question very fully; but I beg again to say that there is no ground whatever for any difference of opinion upon this question; it is a matter of official record; we have it here under the hand of the auditor from the official records of the State; and we have it in a book presented to this Convention for their guidance with reference to statistical matters. The only point that I desire to make upon it is, that we are saying in this Convention, that the advances made to the canals by taxation shall be returned, and I ask the Convention to say what that amount is, otherwise it will be a subject of difference and difficulty in years to come. There is no chance for difference of opinion now.

Mr. HAND—Will the gentleman permit a question? If there is no possibility for difference of opinion now in regard to it, what is the need of inserting any amount in the section? Why insert this statement, if the thing is perfectly clear?

Mr. CHURCH—I say it is perfectly clear; and yet we find gentlemen here, quibbling about the amount, and as time rolls on, these quibbles will grow up into contradictions, and make broils and trouble. Now, we had a discussion of this matter, and I ask every gentleman, who was present at that discussion, to determine for himself, whether the amount reported by the auditor is not the correct amount, and whether they have any thing to contradict that amount.

Mr. ALVORD—I will refer to the testimony of the gentleman's own witness. The auditor, himself, has said in his report, determinatively and distinctly, that there should be a credit to this amount, and he has given the items. That, at once, puts to flight, the assertion that the gentleman stands here on the statement of the auditor.

Mr. CONGER—Will the gentleman from Onondaga, allow me to ask him a question? It is, whether he is not confusing with this, the statement of the auditor given in regard to the old canal debt of 1846.

Mr. ALVORD—No, sir.

Mr. CONGER—Whether there is a single item in the auditor's report diminishing by way of credit, one single item, in this amount of eighteen millions of dollars?

Mr. ALVORD—Most certainly, sir; the entire two hundred thousand dollars paid out of the canal fund to the State government annually, for twenty years, from year to year, with the exception of a few blank years, and amounting, with interest, to over two millions of dollars, and the excess also, over the interest upon the five million six hundred thousand dollars paid into the treasury, making the whole amount some six or seven millions of dollars.

Mr. CHURCH—Now, I ask the gentleman whether there is any doubt or question, that the amount is as I have stated it, with interest?

Mr. ALVORD—There is very great doubt as to that matter, whether you give the canals credit

for what they have paid into the treasury over and above the amount of their regular indebtedness.

Mr. CHURCH—But you give them no credit as the section now stands.

Mr. ALVORD—I take it that when you come to strike a balance in regard to this matter between the canals and the State, you will strike the balance the same as you would in a settlement between individuals, and give the canals credit for the amount that they have paid, over and above the amount they were obliged to pay to meet their indebtedness to the State.

Mr. BELL—I have examined this subject somewhat, and I think that the gentlemen are both right, although there seems to be a contradiction of terms in their manner of stating the matter. I understand that the amount advanced by taxation to the canals to be between thirteen and fourteen millions of dollars, and as the gentleman from Orleans [Mr. Church] states, there is no doubt about that; there can be no doubt about it. To make up the eighteen millions he computes simple interest at the rate of five per cent upon this sum. Now, the gentleman from Onondaga, [Mr. Alvord], claims, and I think rightly, that there should be a deduction from this amount, of the moneys received and paid from the canal revenues for the support of the government, and he claims that the two hundred thousand dollars set apart from the canal earnings, which in the twenty years past has amounted to over two millions of dollars, was set apart for the support of the government, in which also, I think, he is correct. The gentleman from Onondaga attempts to show another point by which this amount of direct taxation should be reduced or credited, viz.: that when the \$350,000 were set apart to pay the interest on the general fund debt which was in excess of the interest on that debt by about \$27,000 a year, for twenty years, and he contends that the fund should be credited with that amount for the last twenty years, thus reducing these eighteen million of dollars by such credits some five or six millions. Now, this question was thoroughly discussed in Committee of the Whole, and we agreed that we should leave the question where it was left in this section, viz.: that these amounts, whatever they were, should be returned to the treasury of the State from the earnings of the canals.

Mr. BICKFORD—Will my colleague permit me to interrupt him? He says it was agreed. Those who insisted that it should be inserted were outvoted, and I suppose that is what he means. [Laughter.]

Mr. BELL—I suppose that we arrive at conclusions here by a vote of the majority, and it is a strange doctrine in a republic that a minority should rebel. Now, there is another view of this subject that was presented at the time, and which has lost none of its force by the lapse of a few weeks. It is this: there is no actual indebtedness on account of the State for this sum of eighteen millions of dollars. It is simply a book account, a memorandum that so much money has been collected by taxation and applied to canal purposes. But, sir, it is immaterial whether the sum is fourteen millions or

eighteen millions, which will amount to the same thing in the end; it is like taking out of one pocket and putting into the other. If it is eighteen millions the Legislature will have more to appropriate; if it is fourteen millions they will have less to appropriate, that is all.

Mr. VERPLANCK—It will be recollected that this subject was discussed at very great length in Committee of the Whole, and that we finally came, by a very decided vote, to the conclusion which is embodied in the article reported to the Convention. Now, the gentleman from Orleans [Mr. Church] says there is no doubt about this amount. I say there is doubt about it. If I should ask members of this Convention whose attention have not been called to this matter, what the amount proposed to be inserted is, not one in ten would be able to state the amount. I do not believe there are ten gentlemen here who can tell me the exact amount proposed to be inserted by the gentleman from Orleans. The gentleman from Orleans says he wants this amount stated because the auditor says it is the correct amount. In the first place it is denied that the auditor says so. What evidence have members of the Convention as to what the amount is, when on the one hand it is asserted that the auditor states the amount at the sum proposed, and on the other hand this is denied? The Committee of the Whole left this matter to the proper officers for adjustment, and there we should leave it, because we do not know with certainty how it really stands, and it is not for us to say, upon the statement of the chairman of the Finance Committee, or upon a reported statement of the auditor, that this is the amount. This matter has been settled by a conclusive vote of the Committee of the Whole, and I hope the Convention will adhere to that decision.

Mr. CONGER—I would like to inquire of the gentleman from Erie [Mr. Verplanck] how he reconciles the discharge of his official duties here with the principles he has just suggested, when he has already approved and passed section 1, of this article, in which the old canal debt is specifically stated as \$3,258.60, and the general fund debt as amounting, on the first of July, 1867, to a sum adjusted down to the nicety of twenty-two cents, and the canal enlargement debt, which is also stated as amounting to a specified sum?

Mr. VERPLANCK—I will answer the gentleman with a great deal of pleasure. I accept those figures in the report because those are amounts which nobody disputes. Therefore we assume to be true, statements which have the acquiescence of every body concerned. Besides, bonds were issued for those debts, and they tell the story beyond all controversy.

Mr. CONGER—Neither could there be any dispute as to the amount which is now sought to be inserted in the Constitution, if the gentleman would only have the patience and candor to discriminate between the present debt for advances since 1854 and the old canal debt. The Constitution as amended, declared that all moneys advanced by taxation for the enlargement of the canals, should be paid into the treasury at current rates of interest. Now, there is no dispute; no one pretends to say that the amount advanced by

taxation varies from the statement given here by the auditor, and by the chairman of the Committee on Finance [Mr. Church], and the only ground upon which those gentlemen can stand, and the only hook on which they can hang any sort of dispute of that statement would be the question whether the current rate of interest was five per cent simple interest, or five per cent compound interest; but as it has been fixed at five per cent simple interest, I think the canals should be very well content with that statement. To my mind there is an imperative reason why this amount should be stated. They failed to state in the Constitution of 1846 the amount of the canal debt, and the consequence was that the first Legislature which met in 1847 undertook to set Mr. Hoffman's account aright, and said that he had made a mistake in the calculation of this matter of interest and advances, amounting to some three hundred thousand dollars, and they passed a law ordering that amount to be credited to the canal fund, and so it was applied.

Mr. VERPLANCK—Let me ask the gentleman this question: If we here should happen to make a mistake in stating this amount in the Constitution, and it should afterward be so plainly ascertained that "he who runs may read," there would be no power in the Legislature or anywhere else to correct it until the Constitution could be amended. Now, humanity is not perfection, and the wisdom of this Convention, as it seems the wisdom of the Convention of 1846 did, may make a mistake. Since there is this possibility of our making a mistake which cannot be corrected, why put it in?

Mr. CONGER—The answer is simply this: We have stated in the first section the exact amount of all existing debts, and the amount that is due to the tax payers is just as clearly and certainly ascertained, and is just as capable of definite statement as the other; and I think the same candor which admits the statement of the one should admit the statement of the other.

Mr. CHURCH—I do not intend to enter into the discussion of this question, and yet I desire that the Convention shall act understandingly upon it. The gentleman from Erie [Mr. Verplanck] says that he disputes this amount. Sir, he does not dispute it; there is no dispute about it. There can be no dispute that this amount of money has been advanced to the canals for canal purposes since 1846. The gentleman from Jefferson [Mr. Bell] has stated the proposition properly. The only point taken by the gentlemen on the other side is that certain amounts which have been paid by the canals, in accordance with the requirements of the Constitution of 1846, should be deducted from this amount.

Mr. VERPLANCK—Will the gentleman allow me to interrupt him to ask a question? The gentleman said, in debate upon this subject, that the Committee on Finance had calculated the interest at five per cent, and had waived the balances. Now, the gentleman at my left [Mr. S. Townsend] asked this, and he has repeated the question to-day: "What right had they to waive the balances; why not put seven per cent?" And I ask why should this Convention allow that committee to waive that two per cent? What right

have the committee to do any such thing? And why has not my friend from Queens [Mr. S. Townsend] a right to be heard before the proper officers in regard to that?

Mr. CHURCH—It was fixed at five per cent simple interest, in a spirit of liberality toward the canals, as the gentleman from Erie very well knows. Now, the point is just here—

Mr. McDONALD—I wish to ask the gentleman from Orleans [Mr. Church], what effect has this section at all? Supposing that the section, as it now stands, either with or without a statement of the amount was stricken out, would there be any different disposition of the money from what there would be with this section in existence?

Mr. CHURCH—I think there would. This recognizes the obligation to return moneys into the treasury of the State which have been advanced for canal purposes. To be sure, it leaves it discretionary with the Legislature to dispose of these moneys, but in their disposition of them they will of course take into consideration the source from whence the moneys emanated and the ends to which they should therefore be applied.

Mr. McDONALD—Would not the moneys go into the treasury and be disposed of by the Legislature without this section, and is not that the exact effect of this section?

Mr. CHURCH—I suppose that if we should strike out the whole of the financial article the moneys derived from the canals would still go into the treasury and be disposed of by the Legislature. But we are, in the first place, carrying out the guarantees of the Constitution of 1846 by requiring this money to go into the treasury, and then we leave the Legislature to dispose of it in whatever way they see fit.

Mr. McDONALD—Is there any other place in the world for it to go except into the treasury?

The PRESIDENT—Gentlemen must discuss the question before the Convention. If any of them desire information of this elementary character they must seek for it elsewhere. [Laughter.]

Mr. CHURCH—I was going to say in reply to the gentleman that, instead of going into the treasury, it might possibly go into the pockets of divers and sundry persons. But the question is this: whether out of the amount advanced to the canals there should be deducted sums paid by the canals to the general fund in pursuance of the requirements of the present Constitution? What I say is that these sums were a part of the settlement at that time between the canals and the general fund, and that therefore they should not be deducted. The canals have not paid all that the Constitution requires. There is \$200,000 a year which they neglected for six or seven or eight years—I forget the number—to pay to the general fund. We make no account of that neglect in the past, and besides we waive entirely in this article the payment of that \$200,000 hereafter for the support of the government; so that there is no propriety in taking the sums paid by the canals in support of the government, under the Constitution of 1846, from the amount which has been advanced by taxation for canal purposes. That is the ques-

tion, and every gentleman is competent to decide it for himself.

Mr. S. TOWNSEND—My friend from Erie [Mr. Verplanck] has alluded to a remark which I made on this floor in regard to the action of the Committee on Finance, in fixing this interest at five per cent. I said, sir, that the Committee on Finance had been very liberal in assuming five per cent as the rate at which this interest should be computed. Now, in regard to the adjustment of this other matter. In the Constitution of 1846, my recollection is, and I think that other members of that Convention will confirm it, that this two hundred thousand dollars was then considered to be an equitable and a very liberal adjustment toward the canal interest who were pressing upon that Convention with all the ardor of the gentlemen who represent that interest here, and with greater fierceness, and who finally, by log-rolling, as I undertook to explain some time ago, achieved their object and secured that arrangement. Under that adjustment, I remember that the contributions made by the people of the State at large toward the canal interest were drawn from various sources, and in some instances from direct taxation; for instance, the steamboat tax was a tax in favor of the canals of a dollar a head upon every man who traveled on the steamboats, and the auction duties and the salt duties were all pledged to the canal interest. I will say here now, that I consider that arrangement, which the committee have made in regard to this interest, extremely liberal, and that, had I been consulted, I should have insisted on having it computed at six per cent, which would give a good round sum of twenty millions of dollars to be reimbursed to the people at large.

Mr. HAND—I do not propose to discuss the merits of this question, or to consider what is the real indebtedness of the canal to the State. It is enough for me that this question has been discussed very thoroughly, and at great length, so that the members of this Convention are tired of it. They have heard statements, somewhat conflicting, from the different officers of the State, until every body is tired of the discussion, and our constituents are weary of it. The matter was settled as we have it before us. Now, I think to open this whole matter, and to enter upon another discussion of a week, in Convention, would be the height of folly. To prevent that, I move the previous question upon this amendment.

The question was put on the motion of Mr. Hand, and it was declared carried.

The question was then put on the amendment offered by Mr. Church, and it was declared lost by the following vote:

Ayes—Messrs. A. F. Allen, Ballard, Bickford, E. Brooks, E. A. Brown, W. C. Brown, Carpenter, Cassidy, Chesebro, Church, Conger, Gould, Houston, Jarvis, Krum, M. H. Lawrence, Livingston, Magee, Merritt, Miller, More, President, Rathbun, Rogers, Roy, Seaver, Silvester, S. Townsend, Wales—29.

Noes—Messrs. Alvord, Archer, Armstrong, Axtell, Baker, Barker, Beadle, Beckwith, Bell, Bowen, E. P. Brooks, Case, Cooke, Corbett, Curtis, Duganne, C. C. Dwight, Eddy, Ely, Endress, Field, Flagler, Folger, Fowler, Francis, Goodrich, Graves,

Hadley, Hale, Hand, Hitchcock, Ketcham, Kinney, Landon, A. Lawrence, Lee, Ludington, McDonald, Merwin, C. E. Parker, Pond, Prindle, Prosser, Reynolds, Root, L. W. Russell, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Verplanck, Wakeman, Williams—56.

Mr. McDONALD—No amendment now being offered, I move to strike out the third section. My reason is simply this, that it has no effect whatever: and the Constitution will be quite long enough, without having in it as long a section as this. The money without doubt will go into the treasury, and the Legislature will do what they please with it; and that is exactly what this section provides.

Mr. AXTELL moved the previous question.

The question was put on the motion of Mr. Axtell, ordering the previous question, and it was declared carried.

Mr. McDONALD demanded the ayes and noes upon his motion. A sufficient number not seconding the call, they were not ordered.

The question was then put on the motion of Mr. McDonald to strike out the third section, and it was declared lost.

There being no further amendment, the SECRETARY read the next section as follows:

SEC. 4. After complying with the provisions of the second and third sections of this article, and after paying said expenses of collection, superintendence and ordinary repairs, the surplus revenues of the canals shall, in each fiscal year, be disposed of, for the improvement of the canals or for such other purposes as the Legislature may direct, but at no time be anticipated or pledged.

Mr. ALVORD—I will suggest to the chairman of the Committee on Finance [Mr. Church], that the word "shall" in the fourth line should be "may"; because it is imperative, and requires the Legislature, each year, to dispose of the whole surplus revenue in one way or another. I move that "may" be stricken out and "shall" be substituted.

Mr. CHURCH—I have no objection to that.

The question was put on the amendment offered by Mr. Alvord, and it was declared carried.

Mr. CHURCH moved to insert the word "shall" in the sixth line after "but," so as to read, "but shall at no time be anticipated or pledged."

The question was put on the adoption of the amendment offered by Mr. Church, and it was declared carried.

Mr. BIGKFORD—I move to strike out the words "but shall at no time be anticipated or pledged." After the debts specified in the first and third sections shall have been paid, it seems to me the reason for not anticipating or pledging the surplus revenues of the canal would no longer apply, and would have no force.

The question was put on the amendment offered by Mr. Bickford, and it was declared lost.

There being no further amendment, the SECRETARY read the next section as follows:

SEC. 5. The claims of the State against any incorporated company to pay the interest and redeem the principal of the stock of the State, loaned or advanced to such company, shall be fairly an-

forced, and not released or compromised, and the moneys arising from such claims shall be set apart and applied to the payment of said stock, so loaned, or to repay the money which may be advanced to pay the same.

Mr. BICKFORD—The word "fairly" at the end of the third line is improperly here. It was discussed, and left out; but by a clerical error it is found here. The word has really no power. I therefore move to strike it out again.

The question was put on the adoption of the amendment offered by Mr. Bickford, and it was declared carried.

Mr. CHURCH—I move to insert the following section between the fifth and sixth sections. I think that is the appropriate place to put it.

"No tax shall hereafter be imposed upon the people of this State for works of internal improvement or their debts, unless authorized by a vote of the people, according to section 11 of this article, except to provide for the payment of the debts specified in section 1 of this article."

Mr. CHURCH—This amendment is substantially the latter part of the eighth section of the financial article as reported by the committee. The amendment was offered in Committee of the Whole by the gentleman from Cayuga [Mr. Rathbun], and it was lost by a small vote. I desire now to take the ayes and noes on this amendment.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. ALVORD—I am willing to follow the gentleman from Orleans [Mr. Church] in this financial article to the extent to which the committee heretofore have seen fit to carry it. But this is asking for a great deal more than has been asked even by the boasted Convention of 1846. It has been voted down again and again, in its different phases. This idea of not permitting the Legislature of this State to go into any work of internal improvement where they follow it up directly by taxation of the people in the law which authorizes the improvement, is going further, I think, in the direction of tying up the Legislature of the State than I can afford to go. I doubt very much indeed whether any improvement will ever be demanded in this State, which in the opinion of the Legislature it is desirable to make, where the people will not approve of taxation for the purpose of getting the means of payment. I trust, therefore, that we shall leave the Constitution of 1846, and this Constitution, if it shall be adopted by the people, without hampering the Legislature to that extent. This whole question has been talked over, over and over again, with reference to this particular matter, both as to the report of the Committee on Finance and the proposition of the gentleman from Cayuga [Mr. Rathbun], and I hope a vote will be taken, because there can be no doubt in regard to the matter; the Convention understand it, and there is no need of discussing it.

Mr. PRINDLE—In the report of the committee I believe the gentleman from Orleans [Mr. Church] made the amount of the surplus revenue of the canal \$2,418,000; the same amount as provided for by section 2. Now he proposes to prevent laying any tax upon the people, for making any work of internal improvement. The proposition which is now offered would de-

feat the completion of a work already commenced, like the Chenango extension.

Mr. RATHBUN—I desire to say a single word with regard to this proposition. This section proposes to control the power which, it is conceded and claimed on the part of the advocates of more liberal policy, is in the hands of the Legislature; that is, that any amount of internal improvement may be made by the Legislature, provided they levy a tax on the people at the same time, for the purpose of paying the expense. They cannot incur any debt. That has been guarded against. They can only incur a debt for internal improvement, by asking the people to sanction that debt by a vote. But they retain the power to commence any new work, or to commence the enlargement of an old work, and to carry it to any extent they please, and levy taxes enough upon the people, from year to year, to pay the expense of carrying on that improvement. I am opposed to trusting that power in the hands of the Legislature, for the reason that I do not believe that any portion of the people of the State would be willing to do so if the question were submitted to them. I do not believe we ought to do it, because if we do, the restriction upon the power to contract a debt is of no avail whatever, provided you find a Legislature that has the boldness to enter into the enlargement of the Erie canal, for instance, this winter, giving and appropriating for the payment of the expense, eight millions of dollars, levying a tax to pay that eight millions to be collected next year. There is no power in the State to prevent that. "No debt shall be created," says the Constitution; but they order the enlargement, and they order a tax upon the people to pay the whole amount of eight millions in a single year, and there is no power to prevent it. Other gentlemen may be willing to trust that power to the Legislature, but I am opposed to it. For that reason I offered the amendment which is now offered by the gentleman from Orleans [Mr. Church]. I took the ground then that I take now, that if it is necessary or important to protect the people of this State against the enlargement or contraction of a debt which results in taxation, it is equally right and proper to guard the people against immediate taxation connected with enlargement of internal improvements. I am therefore in favor of the amendment.

Mr. McDONALD—There is one reason with regard to this which will induce me to vote against it. There is no provision in the Constitution, nor do I understand that it is intended to put any provision into the Constitution, prohibiting the Legislature from spending just as much money as they please, provided they raise it by taxation, on any other subject or for any other object. They may order a Capitol, they may order any thing they have a mind to, provided they levy the tax the next year. Now, I know nothing against the internal improvements of this State as a reason why that provision should single them out, and say that the Legislature shall not tax the people for the internal improvements of the State, although they may tax the people for any other purpose. If there is any special reason for applying this to the internal improvements of the State,

I am willing to make the distinction; but if they are entitled to the same consideration with any other object, let us leave them as we leave any other object, to the discretion of the Legislature, and let the Legislature do what it pleases, provided it will only levy the tax at the time. I have no fears that any Legislature will undertake to levy an eight-million dollar tax.

The question was then put upon the adoption of the section moved by Mr. Church, and it was declared lost by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Armstrong, Ballard, Beckwith, E. A. Brown, W. C. Brown, Case, Cassidy, Chesebro, Church, Conger, Francis, Gould, Hadley, Hardenburgh, Harris, Houston, Jarvis, M. H. Lawrence, Livingston, Magee, Merritt, More, A. J. Parker, President, Rathbun, Rogers, Roy, Seaver, Silvester, Spencer, Stratton, Wales—34.

Noes—Messrs. Alvord, Archer, Axtell, Baker, Barker, Beadle, Bell, Bickford, Bowen, E. Brooks, E. P. Brooks, Carpenter, Cook, Corbett, Curtis, Duganne, C. C. Dwight, Eddy, Ely, Endress, Field, Folger, Fowler, Fuller, Goodrich, Graves, Hale, Hand, Hatch, Hitchcock, Ketcham, Kinney, Krum, Landon, A. Lawrence, Lee, Ludington, McDonald, Merwin, Miller, C. E. Parker, Pond, Prindle, Prosser, Reynolds, Root, L. W. Russell, Smith, M. I. Townsend, S. Townsend, Van Campen, Verplanck, Wakeman, Williams—54.

The SECRETARY read the next section as follows:

SEC. 6. The Legislature shall not sell, lease, or otherwise dispose of any of the canals of the State, but they shall remain the property of the State and under its management forever.

Mr. WALES moved to strike out the section, and insert in lieu thereof the following:

"The Legislature shall not sell, lease, or otherwise dispose of any one of the canals of the State whose revenue shall be sufficient to pay the expenses of collection, superintendence, and ordinary repairs thereof."

Mr. E. BROOKS demanded the ayes and noes upon the amendment.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the amendment offered by Mr. Wales, and it was declared lost by the following vote:

Ayes—Messrs. E. Brooks, W. C. Brown, Carpenter, Curtis, Francis, Gould, Landon, Magee, Merritt, Rogers, L. W. Russell, Seaver, Silvester, Stratton, S. Townsend, Wales—16.

Noes—Messrs. A. F. Allen, C. L. Allen, Alvord, Archer, Armstrong, Axtell, Baker, Ballard, Barker, Beadle, Beckwith, Bell, Bickford, Bowen, E. P. Brooks, E. A. Brown, Cassidy, Chesebro, Church, Conger, Cooke, Corbett, Duganne, C. C. Dwight, Ely, Endress, Field, Flagler, Folger, Fowler, Fuller, Goodrich, Graves, Hadley, Hale, Hand, Harris, Hatch, Hitchcock, Houston, Jarvis, Ketcham, Kinney, Krum, A. Lawrence, M. H. Lawrence, Lee, Livingston, Ludington, McDonald, Merwin, Miller, More, A. J. Parker, C. E. Parker, Pond, President, Prindle, Prosser, Rathbun, Reynolds, Root, Roy, Smith, Spencer, M. I. Townsend, Van Campen, Verplanck, Wakeman, Williams—70.

Mr. WALES—As "forever" is a longer time than even this august body can control, I move to strike out that word in the last line of this section.

Mr. ALVORD—I will state that this is an exact copy from the Constitution of 1846. That "forever" is now through with, and I hope we shall keep the canals another "forever."

Mr. S. TOWNSEND—One of the most distinguished members, certainly, of the Convention of 1846 suggested to me that very amendment.

The question was put on the amendment offered by Mr. Wales, and it was declared lost.

There being no further amendment, the SECRETARY read the next section as follows:

SEC. 7. No moneys shall ever be paid out of the treasury of this State, or any of its funds under its management, except in pursuance of an appropriation by law, nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated and the objects to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix the sum.

Mr. BICKFORD moved to amend by inserting the word "any" after the word "making," in line fifth.

The question was put on the amendment offered by Mr. Bickford, and it was declared carried.

There being no further amendment, the SECRETARY read the next section as follows:

SEC. 8. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation. No money or property of the State shall hereafter be given or loaned to, or in aid of, any individual, association or corporation, unless such gift or loan be specifically granted or loaned by an act, on the final passage of which the question shall be taken by ayes and noes, which shall be entered on the journal, and two-thirds of all the members elected to each house shall vote affirmatively thereon. On the final passage in either house of the Legislature of every act which imposes, continues or revives a tax, or creates a debt or charge against the State, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the State, the question shall be taken by ayes and noes, which shall be duly entered on the journals, and four-fifths of all the members elected to either house, shall, in all such cases, be necessary to pass the same.

Mr. BICKFORD—I feel pretty confident that the Secretary is guilty of a clerical error in this matter; that what he last read was stricken out, and what he first read took its place, on the motion of the gentleman from Onondaga [Mr. Alvord].

Mr. RATHBUN—I hope that will be passed over until we can have the printed copy placed before us.

Mr. VERPLANCK—The report as amended is before us, with the single exception of this section, and the committee did not order that amendment to be printed.

The section was read again.

Mr. ALVORD—I had the honor of offering that amendment, and I offered it after the word "corporation," retaining so much of the eighth section as is included in the first three lines down to the word "corporation." The balance of the section was stricken out.

Mr. CHURCH—I move, as a substitute for this section, the amendment which I offered in Committee of the Whole.

The CHAIRMAN—Will the gentleman reduce that amendment to writing?

Mr. RATHBUN—I move to pass over the consideration of the eighth section for the present, and that it be printed.

The question was put upon the motion of Mr. Rathbun, and it was declared carried.

The SECRETARY read the next section as follows:

SEC. 9. The State may, to meet casual deficits or failures in revenues, or for unexpected expenses not provided for, temporarily contract debts; but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed one million of dollars, and the moneys arising from the loans creating such debts shall be applied to the purposes for which they were obtained, or to repay the debts so contracted, and to no other purpose whatever; and such temporary debts shall in all cases be provided for at the earliest practicable period, and shall be paid within two years after they are contracted.

There being no amendment the SECRETARY read the next section, as follows:

SEC. 10. In addition to the above limited power to contract debts, the State may contract debts to repel invasion of this State or the United States, to suppress insurrection in this State or the United States, or to defend the State or the United States in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised or to repay such debts, and to no other purpose whatever.

There being no amendment the SECRETARY read the next section, as follows:

SEC. 11. Except the debts specified in the twelfth and thirteenth sections of this article, no debts shall be hereafter contracted by or on behalf of this State, unless such debts shall be authorized by a law for some single work or object to be distinctly specified therein; and such laws shall impose and provide for a collection of a direct annual tax to pay, and sufficient to pay the interest on such debt as it falls due; and also to pay and discharge the principal of such debt within eighteen years from the time of the contraction thereof. No such law shall take effect until it shall at a general election have been submitted to the people, and have received a majority of all the votes cast for and against it at such election. On the final passage of such bill in either house of the Legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass and ought the same to receive the sanction of the people?" The Legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same, and may at

any time by law forbid the contracting of any further debts under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable and be annually collected until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability. The money arising from any loan, or stock creating such debt or liability, shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on within three months after its passage, or at any general election when any other law, or any bill, or any amendment to the Constitution shall be submitted to be voted for or against.

Mr. PROSSER moved to add at the end of the section the following:

"But the provisions of this section shall not restrain the Legislature from making any loan that may be necessary for the enlargement, completion or improvement of any of the canals of the State, whenever, and so far as it may be necessary to properly accommodate the business to be done. The amount of such loans shall not exceed in the aggregate the sum of eight millions of dollars, and shall be payable within eighteen years out of the revenues of the canals accruing after the year 1877; and if any loan shall be authorized under the provisions of this section, before the debt stated in section 1 shall be paid or fully provided for; the interest on such loans shall be paid out of the canal revenues not herein otherwise pledged."

Mr. PROSSER—Distasteful as it now is to most of the delegates in this Convention to hear much if any thing more said upon the subject of the necessity, now or at any time in the near future, of the enlargement of the canals of this State, yet I have in my possession some information which I think it is proper for me, as briefly as I may, to lay before the Convention at this time. So far as I can judge of the reason which controlled many delegates in this Convention, in Committee of the Whole, against making provision for the enlargement of any of the canals, it was governed by the belief, as many stated upon the floor, that it was unnecessary, taking the word "unnecessary" in the sense that there was no absolute incapacity to do the business that was offered, and, irrespective of the question whether the freight that was offered could be moved faster or cheaper. Leaving that branch of the question for the present, I shall confine my remarks entirely to the question of capacity. I desire to state that a short time previous to the adjournment of the Convention in September, they passed an order requesting the canal board to inquire into the capacity of the canal, and the board not being in session, that order was directed to the canal commissioner, Mr. Hayt, who, in pursuance of that order, during the recess of the Convention, made a test of the capacity of the canal at Syracuse for twenty-four hours and the precise time taken that each boat required to pass the lock. The result was, boats

passing east required seventeen minutes and twenty-eight seconds, and those passing west required eight minutes and fifty-one seconds. The total boats passed in twenty-four hours were one hundred and ninety-eight—one hundred and four east, and ninety-four west; and this canal commissioner Hayt says in his report to the Convention, is the fair practical capacity of the canal at that place. Canal commissioner Dorn, on the 28th of September, after a break in the canal near Fultonville, lasting five days, and when there were a large number of boats accumulated each side, tested the capacity of the locks at Schoharie creek for twenty-four hours, there being boats waiting all the time, plenty of water, and the locks well tended; the number of boats passed was one hundred and ninety-eight during the twenty-four hours; precisely the same as at Syracuse a short time previous; and the commissioner says that this is a fair practical capacity of the canal at that place. Again, commencing on the twenty-seventh day of September last, and continuing for seventy-six and one-half consecutive hours, I have an account of the passage through the locks during that time at Fort Plain of six hundred and fifty-nine boats, and the precise time required by each; here too, there were boats waiting all the time, and extra help upon the locks to facilitate their passage; so we have these three practical tests of the utmost capacity of the Erie canal to pass all the boats through the locks that can be passed, as rapidly, at any rate as the boatmen will go through; and yet, putting the three tests together, the average is scarcely two hundred boats for twenty-four hours. The month of October shows that this limit of capacity was substantially reached; for there were five thousand eight hundred and ninety-eight boats passed through the lock three miles west of Schenectady in that month, being one hundred and ninety daily. By this showing, it is evident that *very little*, if any more business can be done upon the Erie canal, than was done during the month of October just passed. For these reasons, Mr. President, I think it *exceedingly* unwise to restrain the Legislature from making a loan, payable out of the surplus revenues, after fully providing for the existing debts chargeable upon the tolls by the present Constitution, for the purpose of so improving the capacity of at least the Erie canal, as to make and keep it commensurate with the wants and the needs of the North-western States. Nor should this Convention be unmindful that the people of these States, are by no means so dependent upon this State for an avenue of transit to the sea-board as many apprehend; and they are not so feeble financially or politically, as very long to be imposed upon by exorbitant rates of freight and great delay in the transit of their property. The Legislature of the State of Illinois in the winter of 1862 (I think it was) appointed several commissioners, of whom W. B. Ogden, of Chicago, was the chairman, to proceed to Canada, and also to England, to consult with those authorities as to opening up the route through the Ottawa river and its tributaries, for ship navigation through into Lake Huron, so that steamers with 1200 to 1500 tons cargo might pass out from

Lake Michigan without transshipment to all foreign countries, thus shortening the distance about eight hundred miles to Liverpool as compared with the route through this State and the city of New York, thus greatly reducing the cost of transportation, and shortening the time through very considerably. From an examination of the survey of this route from Montreal to Lake Huron, via the Ottawa river and Lake Nipissing, made by order of the Canadian government, I find it stated that the total distance is 430 miles; that 351 miles thereof is now good ship navigation, in wide and straight rivers, with a depth of from five to twenty fathoms; that by putting in some sixty locks, 250 by 45 feet, with several dams, near where there are rapids, and constructing twenty-nine miles of canal thirteen feet deep (including the Lachine eight and a-half miles long, now fully completed and nearly large enough), the whole distance of 430 miles from Montreal to Chicago will be fully open to steam ship navigation, at an estimated expense of only \$12,000,000, so that steamers with 1200 to 1500 tons cargo may with ease run from Chicago to Liverpool in seventeen days, one-half the time required to transport property via the Erie canal and the city of New York, and at least a week quicker than by way of the lake to Buffalo, and railway to the city of New York. And when it is borne in mind that the average cost of transportation since the 1st of last September has been fully sixty cents per bushel on wheat from Lake Michigan, through this State and the city of New York, to Liverpool, it will be apparent that the strongest possible inducement is afforded the people of the Northwest to re-open their negotiations with the Dominion of Canada, with a view to hasten the completion of this outlet to the sea for their surplus products, so much shorter and cheaper than any other. And this Convention should not be unmindful of the fact that the high rates of freight through this State by railway and canal during this fall, coupled with the further fact that the Erie canal is already being taxed, for months at a time, very nearly to its full capacity, strongly invite the Canadian government to enter forthwith upon the work of so improving the outlet through their dominions as to turn the great bulk of the export and import trade of the North-west for seven months of the year through that channel. Can it then be wise for this Convention to publish to the world, as this article reported by the Committee of the Whole substantially does, that there shall be no further improvement of our canals, however much it may be needed. I trust not; but rather that the Convention will adopt my amendment, making ample and easy provisions for all that is necessary, without any tax whatever upon the people of this State, thus putting at rest, so far as we can, the great discontent of the people of the North-west, and discouraging, as far as we can, the Canadian government from hastening the completion of a work which, if now done of the proportions proposed, would, I feel confident, be exceedingly detrimental to the people of this State in the falling off of the revenues from their canals. It would greatly injure the city where I live, without any corresponding benefit to other

portions of the State, and would, in my judgment, enable Chicago and Milwaukee, for seven months of the year, to rival our own hitherto favored metropolis for the import and export trade of the North-west. The time allotted me (twenty minutes) is quite insufficient to do any thing like justice to this subject. I have stated some of the reasons why I think my amendment should be adopted, and trust the Convention will look upon it with more favor than they have kindred amendments hitherto offered.

Mr. E. BROOKS—I would like to ask two or three questions of a practical character with regard to the amendment, and first to what extent the navigation is improved, and to what extent unimproved, between Chicago and the sea-board. What distance is navigable, and what distance at the present time is not navigable?

Mr. PROSSER—As I have stated, the report says that three hundred and fifty-one miles are now excellent steam navigation for vessels carrying twelve to fifteen hundred tons; and the residue, with the exception of twenty miles, there are little obstructions in the bottom of the river easily removed by dredges. Twenty miles only of additional canal, with some sixty locks, are required to be made.

Mr. E. BROOKS—Another and more important question is this. The gentleman states that by navigation with boats suitable for the canal, freight can be conveyed from the lakes to the ocean, from Chicago to the city of Liverpool in seventeen days; and that it requires thirty-three days for the shortest time when it goes from the lakes through the canals of the State of New York, and then to the city of Liverpool. I should like to know if it is possible for us by an amendment of this kind to come in competition with an improvement such as this. With the enlargement of the Erie canal, supposing it to be all that the gentleman from Erie [Mr. Prosser] proposes, will it be possible to compete with the line through Canada of which he speaks?

Mr. PROSSER—I am not very sure that it is within the power of the people of this State to compete with the line as I think it can be improved in Canada. But it will take some time to make the improvement last alluded to. In the mean time the cheaper and more quickly they can get their freight through this State, the less inducement will there be to make the improvement in Canada. My judgment is that whenever we can get from Buffalo to the city of New York in five or six days by steam, as we could now if this canal were a river, whenever we can carry property at about two dollars per ton, which costs four with our present currency and condition of the canal, we may compete tolerably well with this northern route as I have foreshadowed it. But certainly it is not a good way to compete with it to keep this route in such a condition as it is now, and in which it will be kept most assuredly under the present arrangement. As I have just stated, an addition of ten, or certainly of twenty boats, beyond the number passed over the canal in October, could not have been passed through. The effort to do it would have raised the price from 25 cents per bushel from Buffalo

to the city of New York, which is a very large price, up to 40 cents; because the railways were choked up and there were no other available means of transportation except a common wagon road. I think, then, that if the people of this State will make the Erie canal locks commensurate with the channel of the canal, so that suitable boats can be run upon it, and freight can be cheaper and more rapid, that will be at least a movement in the right direction, and it will enable us to compete, as well as we can compete in this State, with the route that may be opened so cheaply and so quickly in Canada.

The question was put on the amendment offered by Mr. Prosser, and it was declared lost.

There being no further amendment, the SECRETARY read the next section as follows:

SEC. 12. Every law which imposes, continues or revives a tax, shall distinctly state the tax and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

No amendment was offered.

Mr. RATHBUN moved to insert the following section next after section 12:

"Taxation upon the real estate and personal property in this State shall be equal on all such property liable to the payment of taxes."

Mr. CHURCH—Will the gentleman allow me to suggest that this subject of taxation comes in properly after section 14, where the subject is considered?

Mr. RATHBUN—Then I will withdraw the amendment for the present.

The SECRETARY read the next section as follows:

SEC. 13. No deficiency loan shall be made by or on behalf of the State, for a longer period than is necessary to enable the sinking fund provided for its payment, to accumulate an amount sufficient to discharge it; and in no case shall such loan be made for more than six years.

There being no amendment offered, the SECRETARY read the next section as follows:

SEC. 14. The seat of government of the State is hereby permanently located at the city of Albany, but the rebuilding of a new Capitol shall not be undertaken within ten years from the adoption of this Constitution, nor shall any money be hereafter appropriated for that object until the expiration of that period.

Mr. HARRIS—I move to strike out that section. I do not conceal the fact that I feel a great personal interest in the success of this motion. I have frequented this venerable building for forty years. Twenty years I have lived with it under my eye. I have seen the State, in its march of progress, grow away from it. What were once adequate accommodations for the government of the State have now become totally unfit for the transaction of the business of the State. The comfort, convenience and health of the officers of the government demand a new Capitol. In 1865 the Legislature saw fit to pass a law providing that if the citizens of Albany would contribute toward the building of a new Capitol the grounds embraced in the block surrounding this Capitol, the Governor should appoint commissioners, whose duty

it should be to proceed to rebuild the Capitol. With great promptness the city accepted this condition. They proceeded to purchase the Congress Hall block, according to the conditions imposed by the Legislature. They paid for it \$200,000, and vested the title in the State. They performed fully and fairly the conditions on their part, and the Governor, in pursuance of the requirements of the Legislature, proceeded to appoint commissioners to rebuild the Capitol. Those commissioners proceeded to execute their duty. They have procured plans to be drawn. A plan has been adopted. They are now ready to proceed with the work. \$250,000 were appropriated by the last Legislature for that purpose, and now this Convention assumes to itself the power of arresting the work. Sir, I submit, with great respect, that it is not within the province of this Convention. It belongs to the Legislature. It is a fair and proper question for the Legislature. It is not a constitutional question, in my judgment. Perhaps I may be wrong. My feelings and interests may influence my judgment, but I insist that this Convention has nothing to do with the question of rebuilding the Capitol. I believe that they ought to leave it to the Legislature, where it properly belongs. It is said that at this time it is inexpedient to enter on such a work. It will take ten years to build a new Capitol. There will be no appropriation asked for until 1869, and then not more than half a million of dollars. The work must go on gradually. Not more than half a million of dollars can judiciously be expended annually. It is said, in the report of the committee, that the work will cost ten millions of dollars. That is merely assumed. The Legislature have provided that it shall cost only four million dollars, and the most experienced and reliable mechanics stand ready to take the contract for the work, according to a plan which has been adopted, for that sum. It need not cost the State more than four millions, and it will take eight or ten years to expend that amount. If this provision is adopted, and if the people shall ratify the Constitution, I shall never see the new Capitol. Probably not half the members of this Convention will. It will be twenty years before the State can have the accommodations which it requires in a new Capitol. Ten years must elapse before they commence the work, and ten years more before they complete it. There is another consideration. We are adopting some valuable reforms—some reforms I hope to see adopted by the people. We can hardly afford to load down the new Constitution that we adopt by measures which will inevitably secure the opposition of large localities. The people of Albany will feel that the Convention have done them injustice—that they are chargeable with a breach of good faith toward them. They are raising this very year by their taxes the money to pay for this Congress Hall block; and the Convention say to them now: Having performed this contract on your part, you shall wait before you enjoy the fruits of this enterprise ten years, and then wait ten years more for rebuilding the Capitol. I hope the Convention will be willing to strike out this section, and leave the matter

where it properly belongs—with the Legislature.

Mr. CHURCH demanded the ayes and noes on the motion to strike out the section.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. E. BROOKS—I might be willing to strike out the section in accordance with the motion of the honorable gentleman from Albany [Mr. Harris], if I could see any limitation to the necessary expenditure upon the Capitol and the proper expenditure for it. When this subject was up before, I proposed as an amendment to the amendment, and my motion received a very large vote that the expenditure for the new Capitol should be limited to four millions of dollars, which is declared to be, and which is believed to be all that is necessary for completing the work, and which, in my judgment, is sufficient to give the State of New York a Capitol becoming the large number of people within the State. If the gentleman from Albany [Mr. Harris] will consent to insert a provision in the Constitution, by which the expenditure upon the Capitol shall be limited to four or five millions of dollars, I will vote for it with all my heart. But I know, as every gentleman upon this floor must know, that if there is not some limitation put into the Constitution upon the expenditure for the new Capitol, it will be, as has been stated by the Finance Committee, an expenditure, amounting in the end, to some ten millions of dollars. We are not without precedents in regard to such facts. We know what has been expended upon capitols in other States of this Union. We know that where the expectations have been that the cost would be one or two or three millions of dollars, they have gone up to four, five, and six millions of dollars. I think it, therefore, a becoming time and a becoming place, not to say, perhaps, that a Capitol should not be commenced for ten years, but to say to the Legislature of the State, that in the judgment of this Convention, it is proper to impose some limitations to the expenditure for such an object. It must be remembered that these four millions of dollars can be expended upon the walls and upon the foundations, or for the materials of the Capitol. All these lands surrounding us belong to the State. The city of Albany, as has been stated, has purchased the Congress Hall grounds. Not a cent, therefore, is necessary for the purchase of land; and I hope, upon reflection, that it will be the judgment of the members from Albany, that it is proper to put some limitation upon the expenditure for the Capitol, at this time. I am unwilling, therefore, to vote to strike out this section, although I shall be very glad to strike out the limitation of time, and put some limitation upon the amount of money to be expended. I will move to add to the section:

"Provided that the expense of the new Capitol shall not exceed four millions of dollars."

Mr. ARCHER—Will the gentleman fix the amount at five millions instead of four?

Mr. E. BROOKS—Yes, sir. I will make it five millions of dollars. I move to insert "provided that the expense of building the new Capitol shall not exceed the sum of five millions of dollars," and to strike out the last part of the section.

Mr. CHURCH—I desire to have this question met fairly and squarely, whether it is proper and expedient for the people of this State, at this time, with the large amount of taxation weighing upon us, to undertake the building of a new Capitol? If it is, let us leave it to the Legislature, and let them provide the means and the limitations of the expense. If it is not, let us say so like men, and adopt this provision. The limitation of the amount, it seems to me, is of no consequence or importance. Suppose we limit the expense to five millions of dollars, and suppose that the work is half done. What is the consequence? They have expended the five millions, and the work is but half done. What shall we do? We all know what we shall do. The people will be called upon, and will be obliged, under the circumstances, to change the provision of the Constitution in order to finish the work. The limitation of the work contained in the Constitution is of no importance whatever; and if my friend from Richmond [Mr. E. Brooks] supposes that we can limit the amount to five millions by inserting that clause, I can only say that I think he is very much mistaken.

Mr. E. BROOKS—The gentleman from Orleans [Mr. Church] insisted this morning, and carried the Convention with him in the proposition, that it was absolutely necessary to limit in the Constitution the amount of money which we owe on a certain date, and to hold the Legislature to that provision, whatever they may say or do with reference to this section.

Mr. CHURCH—The two things are entirely unlike and dissimilar. The question of the debt is a certain thing. It is past, and we can ascertain it. This is a thing in the future which we cannot ascertain. I do not myself believe that it is necessary to rebuild this Capitol at the present time. I believe that after a lapse of ten years our debt will be very much reduced, if not entirely paid, and then the people will be free, and if they desire to indulge in this little piece of extravagance of \$10,000,000 they can do it. The only reason why I say a word is that it seems to be supposed there is some importance in this clause of the section which my friend has moved, and it seems to me of no importance whatever. I would rather go for the whole thing and leave it to the Legislature to undertake to regulate the amount.

The question was put on the amendment offered by Mr. E. Brooks, and it was declared lost.

The question recurred upon the amendment offered by Mr. Harris, to strike out the section.

Mr. CHURCH demanded the ayes and noes on the motion to strike out.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. VERPLANCK moved that the Convention do now adjourn.

The question was put on the motion to adjourn, and it was declared lost.

The hour of two having arrived, the Convention took a recess until seven o'clock P. M.

The Convention re-assembled at seven o'clock, when proceedings were resumed.

Mr. LANDON—Mr. President, I ask leave of absence, indefinitely, for my colleague, Judge Paige.

There being no objection, leave was granted.

Mr. VERPLANCK—I am obliged to be absent from the Convention, and though I desire to return at the earliest possible moment, I am obliged to ask indefinite leave of absence after the session of to-morrow.

There being no objection, leave was granted.

Mr. GOULD—I ask leave of absence for the remainder of the week for Mr. Clarke.

There being no objection, leave was granted.

The Convention again resumed its consideration of the report of the Committee of the Whole on the report of the Committee on the Finances of the State.

The PRESIDENT announced the pending question to be on the motion of Mr. Harris, to strike out the fourteenth section, upon which the ayes and noes had been ordered.

The SECRETARY proceeded to call the ayes and noes, and the motion was declared carried by the following vote:

Ayes—Messrs. C. L. Allen, Alvord, Baker, Ballard, Beadle, Beckwith, Bell, Bickford, Bowen, E. P. Brooks, E. A. Brown, Cassidy, Cooke, Corning, Curtis, Duganne, C. C. Dwight, Endress, Fowler, Goodrich, Graves, Hale, Harris, Hitchcock, Kinney, Krum, Landon, Lee, Merwin, A. J. Parker, C. E. Parker, Pond, President, Prindle, Root, Roy, Rumsey, L. W. Russell, Schoonmaker, Smith, Spencer, Stratton, S. Townsend, Van Campen, Verplanck, Wakeman, Wales—48.

Noes—Messrs. A. F. Allen, Archer, Axtell, E. Brooks, Case, Chesebro, Church, Ely, Field, Folger, Fuller, Gould, Hadley, Hand, Hardenburgh, Hatch, Houston, Hutchins, Ketcham, A. Lawrence, M. H. Lawrence, Loew, Ludington, Magee, McDonald, Miller, Prosser Rathbun, Reynolds, Seaver, Silvester, Sheldon, Van Cott, Williams—34.

Mr. PROSSER—I move to reconsider the vote just taken.

The motion was laid on the table under the rule.

The PRESIDENT—The Convention will now return to the consideration of section 8 of document 142.

The SECRETARY then read the eighth section, as amended in Committee of the Whole, as follows:

SEC. 8. The credit of the State shall not in any manner be given or loaned to, or in aid of, any individual, association or corporation. No money or property of the State shall hereafter be given or loaned to, or in aid of, any individual, association or corporation, unless such gift or loan be specifically granted or loaned by an act, on the final passage of which the question shall be taken by ayes and noes, which shall be entered on the journal, and two-thirds of all the members elected to each house shall vote affirmatively thereon. On the final passage in either house of the Legislature of every act which imposes, continues, or revives a tax, or creates a debt or charge against the State, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the State, the

question shall be taken by ayes and noes, which shall be duly entered on the journals, and four-fifths of all the members elected to either house shall, in all such cases, be necessary to pass the same.

Mr. ALVORD—I insist upon it that in Committee of the Whole all of the section commencing with and after the word "on," in the ninth line, was stricken out. I therefore move that it be stricken out.

The PRESIDENT—The Chair must be governed by the record made by the Secretary.

The question was put on the motion made by Mr. Alvord, and it was declared carried.

Mr. CHURCH—I offer the following as a substitute for the section.

The substitute was received.

Mr. RATHBUN—I move to strike out all of the section after the words "no money," in the third line.

Mr. VERPLANCK—I would like to hear what the substitute is.

The PRESIDENT—The Chair would inform the gentleman that a substitute is not in order so long as there is an amendment offered.

Mr. RATHBUN—I make that motion for the reason that if the residue of the section is retained there is no restraint whatever upon the gift of the people's money. All that is required for the donating of the money in the treasury is the consent of two-thirds of each body of the Legislature. My observation leads me to be perfectly satisfied that with such a provision there will be no trouble whatever provided you distribute the gifts right and left, east and west, in obtaining the consent of two-thirds of all the members elected to either branch of the Legislature. It would not be done, perhaps on the single proposition to give one particular corporation an hundred thousand dollars. But there would be a combination of railroads and other corporations scattered all over the State, combining the influences of members and representatives from the localities where the gifts are wanted, and the scheme would go through.

Mr. HARDENBURGH—I desire to ask the gentleman a question. I understand his amendment to be the striking out of all the section after the first two lines. I would ask if he proposes to insert any thing in lieu of what he strikes out?

Mr. RATHBUN—No, sir; nothing in the place of it.

Mr. HARDENBURGH—Then you are in the same position we were in last year. It is the precise provision we have in the present Constitution; only the right has been claimed to give away the money and property of the State, but not to loan its credit.

Mr. RATHBUN—I beg pardon; the mistake the gentleman from Ulster [Mr. Hardenburgh], makes, is this; the section to which he refers, is one saying that the credit of the State shall not be loaned to any individual or corporation. This adds another thing, the money of the State, or the property is not to be given away.

Mr. HARDENBURGH—The gentleman has not answered the question. It is the credit only—

Mr. CHURCH—If the gentleman from Cayuga

[Mr. Rathbun], will allow me one moment, I will say that the substitute which I have offered, but which has not been read, I think will meet his views.

Mr. RATHBUN—My amendment would come in after the word "corporation," in the fifth line.

Mr. CHURCH—If the gentleman from Cayuga, will allow me to make a suggestion—the substitute I offered, I think, will meet the difficulty which he wants to avoid.

Mr. RATHBUN—I was going to add a word or two more, and then I will have said all I desire to say. I have no objection to the offering of that substitute.

Mr. CHURCH—I was going to suggest that if the substitute be read, the gentleman will see it presents the issue between the absolute prohibition and the giving away of money for outside purposes. The substitute reads as follows:

SEC. 8. Neither the credit, money or property of the State shall in any manner be given or loaned to, or in aid of, any individual, corporation or association, except for charities and education. On the final passage, in either house of the Legislature, of any act appropriating money for charities or education, the question shall be taken by ayes and noes, which shall be duly entered on the journal, and two-thirds of all the members elected to either house shall in all cases be necessary to pass the same.

Mr. RATHBUN—I am opposed to a portion of that substitute. I am opposed to this doctrine of "charities," unless it is restricted to those charities which are properly State charities. We have been giving away our money in "charities" all over the State, for a number of years, in cases where the State had no interest, no control, no management; where, in point of fact, the Legislature were often imposed upon by being persuaded to bestow charities upon institutions which existed only upon paper. I am opposed to the whole thing. I am opposed to it because all the charities that are given away by the Legislature are gifts from the pockets of the people. The State as a State has no money to give. It has nothing under heaven that it may lay its hand upon. The taxable property of the State is called upon to pay; the tax payer is called upon this year to pay to the tax-gatherer the money given away by the Legislature last year, to which are added the expenses of collection, its receipt, and then of its transmission to the various points in the State where the charities are to be made. In my judgment, "charity begins at home," and it had better be confined to home. If the Legislature has money to give away, without calling upon the people to contribute to the tax-gatherer for the purpose of enabling it to be generous and liberal, I have no objection. But I do insist that the Legislature of this State has no right to give away hundreds of thousands of dollars with a liberal hand, and then call upon the people to pay up at the end of the next year the money which has thus been drawn from their pockets. Every county has its orphan asylum. Every city and town, almost, has some charitable institution which is to be supported in some way. In the county where I reside we have an orphan asylum that takes care of a large number of chil-

dren. It has been supported, with the exception of donations from the State of about a thousand dollars a year, I believe, by the liberality of the people of the locality. The board of supervisors have, by an appropriation for the support of the poor of the county, contributed a thousand or more dollars annually.

Mr. BELL—I would like to inquire if the charities of the State are now under consideration?—if the substitute proposed by the gentleman from Orleans [Mr. Church] is before the Convention?

The PRESIDENT—The Chair holds that the spirit of the question of charities is under consideration?

Mr. RATHBUN—It is a part of the very thing this bill proposes as it stands.

Mr. BELL—I did not understand the substitute offered by the gentleman from Orleans [Mr. Church] was before the Convention.

The PRESIDENT—It is not.

Mr. RATHBUN—I am not discussing it. I am discussing the question involved in the amendment.

Mr. BELL—I only wish, as far as possible, to aid in the progress of business, and to confine our remarks, as far as may be, to the subject under consideration.

Mr. RATHBUN—If I am not in order, the gentleman will raise the point. I do not intend to violate any rule.

The PRESIDENT—The Chair holds that the gentleman is entirely in order.

Mr. RATHBUN—Now, sir, if the Legislature will authorize the boards of supervisors of the several counties in this State to levy and collect taxes for the support and maintenance of these charitable institutions, then we know precisely what we are about; we know whence the money comes and where it goes; we know we lose nothing in its collection except what is paid in the assessment and collection by public officers; we know just how much money is desired and necessary to support the institution in our county; and that the money would be raised equally from among the people, and honestly appropriated to the object for which it was raised. There is where this thing ought to be done, and not here where the members of the Legislature are strangers in a great degree to the institution for which money is asked, and the manner of its management, its necessities and expenses. All these things are unknown to them; and all these things are entirely familiar to the board of supervisors. That is where I think charity ought to begin and end. The people of a county have something to give, and they have something to gain by that gift. They gain in the education of their children; they gain in the preservation of their health. They gain in the preservation of their morals; they gain again in the maintenance of good order, and of charitable institutions in a manner creditable to themselves and honorable to the whole State. There, sir, is where this assistance and charity should originate—among those who know the object, and the extent of the necessities and who ought to be liberal enough to meet the demand that presents itself. I therefore, can allow nothing of this kind, by my vote, to get into this Constitution.

Mr. BECKWITH—I would inquire of the gentleman [Mr. Rathbun] what he proposes to strike out.

The PRESIDENT—He proposes to strike out the remainder of the section after the word "corporation" in the fifth line.

Mr. BECKWITH—Then we have a distinct proposition before us whether the Legislature shall have any power to appropriate money or property to any of these associations.

Mr. E. BROOKS—I understand the proposition of the gentleman [Mr. Rathbun] is to deny to the Legislature all power to make grants of money to any charitable or educational institutions in the State of New York. I believe that is the substance of the proposition. If I misrepresent it, I hope he will be kind enough to say so. This I believe is the fact. He denies to the Legislature all grants of money for any charitable purposes whatsoever, except those institutions which are known as State charities. Now, Mr. President, I would like to ask the gentleman why it is that he discriminates in regard to any of these charities. Let me take the blind asylums, for example. These are recognized as State institutions. The inmates come from the respective counties of the State. Why does he not, consistently with his principle, say localities shall support the blind, the deaf, the dumb, the idiotic, the insane, and also the inmates of the institutions known as juvenile asylums?

If these localities are to support these respective institutions, who will draw the line between one class and another class? And let me ask him again, if there is a disposition to discriminate in this way why does he not include all the criminals, and say that those who are sentenced in the county of Cayuga should have a prison in the locality and be supported there? It seems to me that there would be just as much justice in the one case as in the other. In my judgment, there is a very erroneous opinion entertained by many gentlemen here in regard to these charities. They are economical in their nature. Take the State prison for example. I did not anticipate this discussion to-night, and therefore did not prepare myself to state accurately, but as near as I can recollect, the State has received from its three State prisons during the last twenty years something over two millions of dollars, and has expended only five millions of dollars upon them. Take any other of those institutions, and the same is true of them. They have a local character and a State character; these orphan asylums to which allusion has been made, and all eleemosynary establishments whatever, are intended to save money and do save money. Every institution that contributes to the diminution of vice, that makes provision for the support of the poor, that takes up those who are tempted and places them in the way of reform, are institutions which, in the end, save the people a large amount in taxes and a large amount of expenditure in various ways. For one, I would be ashamed to recognize myself as a citizen of the State of New York if I could believe that the Convention would prohibit the Legislature for all time to come from making appropriations for charitable institutions. Present the subject in whatever way you may, whether in the light of humanity or in the light of justice,

or as an economical measure, in my judgment we but discharge the duty of the State to the unfortunate class of people in making appropriations of this kind. Sir, I had supposed that we had compromised this matter by adopting the amendment of the gentleman from Orleans [Mr. Church] the other day in Committee of the Whole, when, by the common consent of the Convention, it was agreed that when two-thirds of all the members of the Senate and Assembly should consent to make provisions of this sort, there should be no objection to them. I hope the matter will be left in this condition. I know there is a great deal of log-rolling in regard to legislation. But, sir, let me tell you, it is not in regard to your charities, nor in regard to your educational institutions, that these combinations are made. They are made, rather, where a great deal of money is to be secured for individual benefit, or for the benefit of corporations, than where appropriations are made for the relief of those who are suffering, those who are sick and those who are poor. I did not anticipate a discussion upon this question this evening, but these are my views in regard to it, and I trust that upon the sober second thought the gentleman himself will withdraw the amendment, or if not, I hope the Convention will vote it down.

Mr. AXTELL—I move as an amendment that all after the word "corporation," in the third line, be stricken out.

Mr. CHESEBRO—I would like to inquire whether that is not the same amendment offered by the gentleman from Cayuga [Mr. Rathbun].

The PRESIDENT—It is not. The gentleman from Cayuga proposes to strike out all after the word "corporation," in the fifth line.

Mr. CHESEBRO—I would like to say one word in regard to this. I have been necessarily absent for some days, and I may not be fully informed in regard to the present condition of this subject; but I understood the last time I was in this Convention that the subject-matter of this report, so far as it related to charities, was to be postponed until the report of the Committee on Charities was taken up by Committee of the Whole. For one, sir, I am in favor of retaining the power in the Legislature of making appropriations to charitable objects and institutions, and I should prefer, if this matter has been postponed until that time, that it should remain in that condition for the present, instead of opening up the whole subject now. If the amendment proposed by the gentleman from Cayuga [Mr. Rathbun] is now adopted, of course it forecloses the whole question.

Mr. VAN CAMPEN—I do not desire to detain this Convention, but I desire to say a few words on this subject. After a great deal of discussion, in Committee of the Whole, on this question, in which there was manifested a good deal of heated feeling, from the fact that many gentlemen in this Convention are entirely opposed to the whole section—entirely opposed to tying up the hands of the Legislature so that it shall not in the future be able to do what it has been doing in the past—after much consideration this section, as it is now printed with certain parts stricken out, was adopted in Committee of the Whole; and I trust

that with that consideration, and the surroundings under which the section was adopted, fresh in the minds of the gentlemen, this Convention will not think fit to change this section at this time. For myself, the section does not please me entirely. My part of the State is not finished up. I do not happen to live in one of those fortunate districts which has been finished up during the time that the opposite policy has prevailed; and, sir, I do not think it shows a very commendable spirit on the part of those gentlemen who live in the older districts of the State, in which public improvements of every kind have been instituted and fostered by the State, to come now and attempt to shut the gate against less fortunate regions. These older districts have been continually drinking up every thing that has come in, and now they do not want any thing to go out, and I do not think that is manifesting a very commendable spirit. This section, as it stands, will probably meet the approbation of the people of this State, and shut down the gate, as these gentlemen propose; but I will be willing to give bonds that you cannot get the Constitution approved. I trust, therefore, that this Convention will let well enough alone.

Mr. E. BROOKS—Before this question is put I wish to make a single remark to the Convention. I have carefully considered all the appropriations that have been made for charities in this State for the last twenty years, and gentlemen will be surprised when I say that they amount to just one thirty-second part of a mill, and if you include the educational institutions, asylums for the deaf and dumb, the blind, the idiotic and the insane, they amount to but one-fourth of a mill: and I submit that that is not a large sum to give in that time to institutions of this character.

Mr. BARKER—I rise merely to make a suggestion, not to make any extended remarks. I wish to see if my ideas are correct in relation to this section before I give a vote upon this interesting and important subject. I do not understand that if the motion of the gentleman from Cayuga [Mr. Rathbun] prevails it will take away from the Legislature of this great State the power to continue a system of charities, by gifts and bounties. If it does I most certainly would not vote for it.

Mr. FOLGER—It does.

Mr. BARKER—I apprehend not, but if it does I am greatly mistaken. As the section will then read, the prohibition will relate only to institutions which are individual in their character, institutions composed of many individuals, called associations and corporations, over the management of which the Legislature has no control.

Mr. E. BROOKS—Will the gentleman allow me to make a remark?

Mr. BARKER—Certainly.

Mr. E. BROOKS—I will read what the gentleman from Cayuga [Mr. Rathbun] proposes, and it is precisely this: "No money or property of the State shall hereafter be given or loaned to, or in aid of, any individual, association, or corporation." It says "given or loaned."

Mr. BARKER—Most certainly; but that does not deprive the Legislature of the power to create and carry on a system of charities, public insti-

tutions which belong to the State, and under its management, and which has nothing to do with individuals or corporations. These State charitable institutions, in my judgment should be fostered and treated with great liberality, and extended to meet the wants of a rapidly increasing population; but for one, I am opposed to any longer making gifts and appropriations under the cloak of charity, but really carrying out the design of local authorities to make the whole State contribute to the support of their poor. This is the reason why I shall vote for the amendment of the gentleman from Cayuga [Mr. Rathbun], and when the question comes up for maintaining the charities of the State, to give power to appropriate the public moneys for that purpose, I trust I shall be found as generous and as liberal as my friend from Richmond [Mr. E. Brooks].

Mr. CHURCH—It seems to me it is important that the Convention should understand precisely what the question is that is to be voted upon. The pending question, as I understand it, is upon the motion of the gentleman from Clinton [Mr. Axtell], to strike out all after word "corporation" in the third line. If that motion prevails it leaves this Constitution precisely where the present Constitution is. It simply prohibits the loaning of the credit of the State. It has no application whatever to the money or the property of the State. If that amendment should be rejected, then comes the amendment of the gentleman from Cayuga [Mr. Rathbun], to strike out all after the word "corporation" in the fifth line, which prohibits the loaning or giving of the money or property of the State.

Mr. AXTELL—The gentleman from Orleans, [Mr. Church], has correctly stated the question, and I call the attention of the Convention to the fact that we are now to decide this question which has hitherto occupied so much of the attention of the Convention—the question whether the people of this State shall now commit themselves to a new policy in regard to gifts, for internal improvements and in regard to charities and education, or whether they shall adhere to the traditional policy of the State. No gentleman on this floor can say that the gifts that have been made by the State, to charitable institutions, and to private corporations for public uses—to railroads, for instance, have been unwise. They have aided the development of the resources of the State, and no government has ever yet been carried on upon the principles that are sought to be fastened upon this Constitution by the gentlemen who advocate the adoption of the amendment offered by the gentleman from Cayuga [Mr. Rathbun], and on the principles embodied in the section proposed by the gentleman from Orleans [Mr. Church]. No government, I say, has ever been carried on upon these principles. I remember that the gentleman from Orleans stated on this floor, sometime since, that he was opposed to internal improvements, and that the only legitimate function of government is to protect individuals in their rights. That is the general idea, and he seeks to fasten it upon the Constitution of the State of New York. Now, that idea has never yet advanced the prosperity of any State or nation, because as I have before

remarked, no nation has ever acted upon it, and I for one, do not believe it is wise or proper for us to attempt to commit the people of the State of New York to this new policy.

Mr. ALVORD—This matter was very fully discussed a few days ago in Committee of the Whole. The proposition was made there which is now made by the gentleman from Clinton, [Mr. Axtell], and also the proposition which has been offered by way of substitute by the gentleman from Orleans [Mr. Church]. The Convention in Committee of the Whole came to a very nearly unanimous conclusion in favor of the compromise which has been made in the section as it is reported, and as it now stands. The facts are that so far as regards the past action of the Legislature of the State of New York in all cases of charity where there has been an actual gift or release of the property of the State, or where the property of the State has been given for any purpose, the Legislature have required a two-thirds vote. Each session they have what they call a charities bill, which is separate and distinct from the appropriation bill; the appropriation bill requiring only a majority vote under the Constitution, and the charities bill requiring a two-thirds vote. That has been the mode of action in regard to this matter of the Legislature for some years past.

Mr. BECKWITH—I would ask the gentleman whether he means two-thirds of a quorum or two-thirds of all the members elected.

Mr. ALVORD—Two-thirds of all the members elected to each house of the Legislature. But in reference to grants for railroads, another rule has obtained. In regard to them it has been settled by the Attorney-General of the State, followed up by decisions, that they partake enough of a public necessity to have appropriations made for them by a majority vote. That, in my opinion has been a mistake, because I think they should be dealt with in the same way as we deal with appropriations for charities; and, sir, I am of opinion that we are cheating the State when we undertake to be as radical as is suggested, either by the gentleman from Cayuga [Mr. Rathbun], or the substitute proposed by the gentleman from Orleans [Mr. Church]. We will go far enough when we shall determine that it requires two-thirds of the members elected to each house of the Legislature to make a grant to a local railroad. We should be satisfied with that from the history of the past—from seeing how difficult it has been for the advocates of these railroad appropriations to get any thing like a two-thirds vote in favor of them; and if we require that railroad appropriations shall be made by a two-thirds vote, all applications for such appropriations will stand upon their merits, and none of them will be able to get through, unless they have transcendent merit. Another thing; we are about to issue a Constitution which restores to the general fund or treasury of the State the money which has heretofore been obtained by taxation for the purpose of building our canals, and which gives the Legislature the right to distribute that money again, either for the canals or for any other such purpose as they may please. Now, the counties of St. Lawrence and Jefferson,

and others of the remote counties of the north, and the counties on the southern border have contributed to a large extent by taxation for the benefit of the canals, but have not had the additional benefit from these internal improvements; and if the people, after this money shall be returned to the treasury see fit to give to these localities some portion of it, we ought to be willing that they should do so. I trust, therefore, that under all the circumstances surrounding this section, as it now stands—a great reform having been made in the direction of prohibiting the Legislature from the expenditure of the public money, except by a two-thirds vote for these appropriations, instead of a majority vote—that it will be permitted to remain as it is.

Mr. AXTELL—I wish to explain in regard to my amendment that I would not have offered it but for the amendment of the gentleman from Cayuga [Mr. Rathbun] re-opening a question which I supposed was virtually settled by the action of the Committee of the Whole.

Mr. RATHBUN—I am opposed to this thing upon all possible grounds that a man can imagine, and I am not in favor of it upon any of the grounds suggested by any of the gentlemen who have spoken in its favor. The people of the State, through the Legislature, have loaned the credit of the State at various times in millions of dollars, and that money has been lost, and the whole people of the State have been taxed and the money has been collected from them to pay the debts thus incurred.

A DELEGATE—This does not touch that money.

Mr. RATHBUN—I know it does not touch that, but it touches like cases. I do not expect to get that money back, but I would like to see the Constitution settled, so that we may have no more of that kind of business. Now, a new theory has sprung up within the last few years in regard to appropriations, and in regard to loaning the credit and money of the State. Railroads have been projected, radiating from Albany some of them, and others ranging through the country in other directions, and the Legislature have been bestowing funds upon them, to the Albany and Susquehanna and other railroads; in all, I think, a million and a half, or something like that; and to a northern railroad, somewhere in the northern part of the State, the Whitehall and Plattsburg road, I believe. Now, sir, a large part of that money thus given away, is in the tax list, to be paid by the people this winter.

Mr. MILLER—I wish to correct the gentleman as to the amount that has been given to the Albany and Susquehanna railroad; \$750,000 is the whole amount.

Mr. RATHBUN—So I understand; and enough additional has been given to some northern railroad to make up a million of dollars or more. A part of this money has been paid already by taxation, and the balance is in the tax list this year to be paid. Of course there are gentlemen here who have had the benefit of this kind of liberality. The advocates of this doctrine can count a majority of twenty-five or thirty men, who are coming into this hall on the first of January next, and who are sent here upon the strength of just

such appropriations, and we have only a few things more to do in that direction, to so outrage the people that the party in power will soon have nobody here to represent them. The people have become tired of it. Talk about the State donating money to railroads and charities, and scattering it broadcast in every direction by way of gift. Where does the money come from? Out of the pockets of the people, sir, and the burden is rolled up and multiplied upon them, year after year, to maintain the reputation of the State for "generosity and liberality." The people are loaded down with debt, ground into the earth by taxation, and yet the Legislature can be generous, can give away a million of dollars in the year 1866, and in the year 1867 the people have to put their hands into their pockets to pay it. Sir, I like to see people generous, but I like first to see them just; and while these taxes are grinding the people down as they now are, what folly it is to talk about aiding or assisting railroads, or about appropriating money to different portions of the State, which are now claiming that they have not had their share of previous appropriations. I would like to see that portion of the State which has not had as much benefit from the money that has been distributed in the past, as the other portions have had. Why, sir, I live in a section of the State, where I am not aware that the State has ever bestowed a dollar upon any thing in the county, except a thousand dollars, once or twice, to the orphan asylum, and that money came out of the people of the county, and after taking out of it the expenses of collection, and transmission, and some other things, amounting to five or ten per cent, why then we got our money back again by way of charity; and that is the sole idea of charity here, to have a charity which is founded upon a practice little better than larceny. In the first place, pilfering from the pockets of the people money which they work hard for, and which they should be allowed to retain, and giving it away to railroads, and charitable institutions, as they are called, many of which exist, only on paper. Mention is made of the appropriation to the orphan asylum in Cayuga. We do not want it; we are able to support our own orphans; that is what we ought to do, and what the people of the State ought to do. That orphan asylum was built by the voluntary contributions of the people, and the funds have been mainly raised by subscription among the people to maintain it from year to year. It has now become so far a benefit to the people of the county, generally; that the supervisors have taken hold of it, and they are competent to make it a charity of the first order, but it is local, and they are entitled to make it a local institution, and to have the credit for so doing. And so it should be with institutions in other portions of the State. I want this amendment to pass; it may be radical, but it is radically right. I do not know what right the Legislature have to put their hands into the pockets of the people of Cayuga county, and draw out money and give it to a railroad corporation up in the northern part of the State, or to a railroad running west from Albany, or anywhere else. They have no right to do it. They have not done it in favor of us,

and we do not ask them to do it, but we do ask to be let alone. We are willing to pay such taxes, and to incur as much burden for the purpose, as is necessary to maintain the credit and the honor of the State, but nothing more. If you want taxes to pay the debts of the State, pile on, and if they are knee-deep we will not complain of them if you can only say that the debts have been honestly incurred, and that the money has not been given away by way of gift to some railroad, or some private matter in which the people have no interest, and for which they ought not to be charged. All that the people of Cayuga county ask is to be let alone, in the enjoyment of what they have, so far as it may be done without any sacrifice of the public interest; and, as I have already said, when the credit or the honor of the State is at stake you may call upon the people of the western counties and they will respond cheerfully to bear the burdens of the State, but they will bear it only so long as they know that their money is appropriated for the public benefit.

Mr. AXTELL—I withdraw my amendment, and move the previous question on the adoption of the section.

Mr. E. BROOKS—I hope the gentleman will withdraw his demand for the previous question and permit me to say a word. I will renew the demand if necessary.

Mr. AXTELL—I will.

Mr. E. BROOKS—I desire to say a few words in reply to the gentleman from Cayuga [Mr. Rathbun]. He says that the people of Cayuga do not want this money and do not ask for it. I can only say in reply that the people of Cayuga are much more fortunate and much more wealthy than the mass of the people in other parts of the State. There are those who need this charity; and it is indispensable, if this be a free government, a just government, and a liberal government—or, as my friend from Jefferson [Mr. Bickford] sometimes says, a beneficent government—if we are to exercise the duty which belongs to the people of the State toward those who are needy, it is impossible for us to close our hands and say that we will give no appropriations for objects of this kind. Sir, it seems to me that the gentleman does not do justice to the great body of the people of the State when he rises here and proposes to prevent the Legislature from making appropriations of this kind. He seems to stand rather in the spirit of the Pharisee of old, and to say with regard to his own people that they are somewhat better off, if not in kind, at least in material advantages, than the people of other parts of the State. Now, I do not pretend to be any more charitable than any other delegate in this Convention; I do not think that I practice any more charity, and I do not mean to profess any more; but I do hold that we are bound as a people to relieve the necessities of those among us who are unable to take care of themselves.

Mr. BAKER—Will the gentleman allow me to interrupt him?

Mr. E. BROOKS—Certainly.

Mr. BAKER—Does the gentleman claim, as a matter of right, that the people of the rural counties should be taxed to support the paupers of the city of New York when we, in the rural

counties, have to support our own poor and do support them?

Mr. E. BROOKS—The gentleman is mistaken when he says that the people of the rural districts support their own poor. With all due respect to his judgment and opinion, they do no such thing, and I will demonstrate it here. Take the immigrants who come to this country in such large numbers, two hundred and fifty thousand a year, and over three millions and a half during the last twenty years. The people of the rural districts have received over one million of dollars of immigrant money derived from the tax imposed upon the immigrants who arrive at the port of New York. This was a very equitable tax, a very just tax, but it came not from the people of the county of Montgomery nor of any other county, but from that immigrant fund raised by imposing a tax of a dollar and a half a head upon every immigrant passenger arriving at the port of New York. And let me tell the gentleman [Mr. Baker] that the people of his county, and of every other county throughout the State, are very prompt in demanding, and very tenacious in getting, every dollar that belongs to them on account of the support of this class of the poor. I do not deny that it is just, but I mean to say that of this immigrant money the counties outside of the city of New York received their full share—

Mr. BAKER—Does the gentleman decline to answer my question?

Mr. E. BROOKS—What is the gentleman's question? I understood the question to be—is it right for the people of Montgomery county to support the poor of the city of New York? Why, sir, if you take the poor that properly belongs to the city of New York I might give a negative answer to that question. And this leads me to the consideration of another point which may properly be a subject of consideration when the report of the Committee on Charities comes up. It is that a large portion of the expenditure made in the city of New York for the maintenance of the poor and for foundlings, principally arises from persons coming from the rural districts of the State to the city of New York and making that city a sort of head-quarters, first for the concealment of their vice, and secondly for the support of the consequences of it. [Laughter.]

Mr. BAKER—Is the gentleman aware that this is a sort of reciprocal business, and that a great many paupers come from the city of New York and locate themselves in the various counties of the State? Is the gentleman aware of that fact as a fact? If not, sir, the statistics will satisfy him that it is so.

Mr. E. BROOKS—Let me take, for instance, the founding hospital recently established in the city of New York. The affirmation of gentlemen here in regard to that, judging from their remarks on the subject, is that the great body of the inmates of this institution—the children of unfortunate mothers or of wicked mothers and fathers—properly belongs to the city of New York, yet the fact is that not sixteen per cent of the whole number of them properly belong there. They come from the counties upon the rivers and canals to the city to conceal their crimes, and yet the city of New York is made responsible

for the existence and support of all this class of persons. Now, I ask my friend from Montgomery [Mr. Baker] if it is equitable or just to make a locality responsible for the support of those people? Again, in the city of New York we have a number of hospitals. There is the hospital on Broadway and one at Bloomingdale, two of the most humane institutions ever founded in the history of the State or of the world. The inmates of one of these institutions are made up largely of seamen arriving at the port of New York, men who are part of the general population of the State, and belong just as properly to the other parts of the State as to the city. Now, why should the city of New York be compelled to support all the infirm and decrepid sailors arriving there, or why should that city be compelled to support that unfortunate class of persons who are lame, halt or blind, and who are cared for in that hospital? This is an institution of the city of New York for the relief of the poor, but is it necessarily or properly a local institution which should receive only local support? Sir, as I said before—and I desire to present this view to the gentleman from Cayuga [Mr. Rathbun] and the gentleman from Montgomery [Mr. Baker], and to every member of this Convention—that these charitable institutions are a part of the State, and the question is whether you will do with them for the next twenty years what you have done for the last twenty years—pay \$3,000,000 to support your own poor in your State prisons, or pay one hundred, or two hundred, or three hundred thousand dollars to support them in reformatory institutions of various kinds, which will keep them out of the State prisons. This is the practical question to be considered in discussing this matter. These charitable institutions save the lives of unfortunate people and they save the property of the State, and I do maintain here, against the judgment of the gentleman from Montgomery [Mr. Baker], that there is no tax more willingly borne by the great majority of the people of this State than that tax which is imposed for orphan asylums and dispensaries, and all charitable institutions of this character. I hold in my hand one of the documents of this Convention, which states that the entire amount of the grants of public moneys for charitable institutions, instead of being millions for every two or three years, as has been suggested here, has been for twenty years past but \$6,900,000, and of this money the institutions for the deaf and dumb have received nearly a million of dollars, and the institution for the blind about half a million, and another institution for the blind thirty-one thousand dollars. The Society for the Reformation of Juvenile Delinquents in the city of New York has received \$647,000, and there are in that institution one thousand inmates, eight hundred boys and two hundred girls. I may remark here, sir, that this institution had its origin in one of the most interesting facts connected with the charities of this State. In 1825 there was a boy arrested for stealing a canary bird. It was, if such a thing is possible, rather an innocent theft, and perhaps not a very great crime, but the youthful culprit was liable to be sent to the State Prison for that simple offense,

and his case suggested the impulse which resulted in the founding of an institution which has provided homes and occupation for thousands who, without them, would have had neither; it has made men of thousands and tens of thousands of boys now living in different parts of the country, in the east and in the west. I tell the gentleman from Cayuga [Mr. Rathbun] that this institution has saved the State a million of dollars in indebtedness, and ten millions in the prevention of crime. Again, some of the institutions which are put down as charitable institutions are not properly so described. Take your State Normal School, and your State Agricultural College. They are not in any proper sense, charitable institutions. Take your Academies; the document which I have referred to shows that you have spent upon your Academies \$1,140,000, and a part of that comes out of the general appropriation to which I have made allusion.

Mr. LOEW—What is the number of the document to which the gentleman refers?

Mr. E. BROOKS—Number 154. Now, we have expended on these orphan asylums during the last thirty years \$617,000, and for hospitals, \$828,000, and a large portion of this money has been spent during the last few years, or since the commencement of the war, and the appropriations were made upon the condition that the poor, unfortunate soldiers, the sick, maimed, halt and blind, should be provided for in consequence of these appropriations, so that we have got an equivalent, and more than an equivalent for this expenditure. Then we have spent for colleges \$155,769. They are not properly charities, and yet I believe that under the general and common law, perhaps as a bridge is called a charity, so a college or an academy may be so classed. Mr. President, before I sit down let me express my regret that the subject of railroads has become connected in this debate with the subject of charities; in my judgment they are eminently distinct things. They have their own merits, and I regret that they are not presented separately in this Convention. I have no more interest or responsibility in this matter, Mr. President, than any other member of this Convention, but I should count it one of the greatest misfortunes of my life to have been placed by your partiality at the head of the Committee on Charities, and to have failed to convince the judgment and the hearts and the minds of members of this body of the justice of the appeal which I make in behalf of these institutions.

Mr. RUMSEY—I desire to offer an amendment at this stage.

The PRESIDENT—There are two amendments already pending.

Mr. AXTELL—I withdrew my amendment.

The PRESIDENT—The Chair understood the withdrawal to be coupled with a demand for the previous question.

Mr. AXTELL—I withdraw the call for the present.

Mr. RUMSEY—I offer the following amendment; after the word "corporation" in line five add the following, "except at the New York Institution for the Blind, the New York State Insti-

tation for the Blind, the Society for the Reformation of Juvenile Delinquents in New York, and the New York Institute for the Deaf and Dumb." I send to the Secretary, to have read, a communication which I have received from the Comptroller in regard to these charitable institutions.

The SECRETARY read the communication as follows:

STATE OF NEW YORK, COMPTROLLER'S OFFICE, }
ALBANY, July 12, 1867 }

Hon. DAVID RUMSEY, Albany, N. Y.:

Dear Sir—The following list gives the names of the charitable and other institutions that may be classed as State institutions;

New York Institution for the Deaf and Dumb, chapter 264, laws of 1817.

New York Institution for the Blind, chapter 214, laws of 1831.

New York State Institution for the Blind, chapter 587, laws of 1865.

Society for the Reformation of Juvenile Delinquents in New York, chapter 128, laws of 1824.

The Western House of Refuge for Juvenile Delinquents, chapter 143, laws of 1846.

State Lunatic Asylum, chapter 82, laws of 1836, and chapter 135, laws of 1842.

The Asylum for Idiots, chapter 502, laws of 1851.

The Willard Asylum for the Insane, chapter 342, laws of 1855.

Hudson River State Hospital for the Insane, chapter 93, laws of 1867.

There is some difficulty in drawing the line between what may be denominated a State institution, and a private corporation or association. The Western House of Refuge, the State Lunatic Asylum, the Idiot Asylum at Syracuse, the institution for the blind at Batavia, the Willard Asylum for the Insane at Ovid, and the Hudson River State Hospital for the Insane at Poughkeepsie, are in every sense State institutions, having been built and being managed by the State at the public expense and for State objects and purposes. The remaining institutions mentioned in the list are corporations created by special acts, and over which the State exercises only a partial control. They are, however, State institutions in their objects and purposes, and they have usually received annual aid and gratuities from the treasury.

Respectfully yours,

THOS. HILLHOUSE, Comptroller.

Mr. RUMSEY—There are certain institutions in this State having a charitable object that require, for the purpose of carrying them on, a larger annual expenditure than it is usual or possible to meet by the voluntary contributions of private individuals or of associations. There are institutions that minister to the infirmities of a class who are, more than any other class, dependent upon our charity. I mean the blind and the deaf and the dumb. Every person at all familiar with those charities knows that it requires, to carry them on, an experienced corps of teachers; that it requires expensive apparatus, and that they are institutions which make a strong appeal to the feelings and sense of justice of all who have any knowledge of them, and that we should give them all such aid as is requisite for the purpose of carrying them on. A portion of these

institutions for the education of the blind and the deaf and dumb are State institutions and controlled by the State, and there is no need of excepting them from the provisions of this section, because they do not belong in any sense to individuals, associations or corporations; and there are others which I have named in my amendment which, as will be seen by the letter of the Comptroller, are charities of the same class—charities which, by the very acts creating them, are required to receive patients from the various parts of the State, to minister to their infirmities and educate them. As a consideration for their doing this, the State has uniformly, hitherto, furnished a portion of the money necessary for carrying them on. Now, I desire that we may be still at liberty to make gratuities to that class of institutions whenever it may be necessary, and to do it by ordinary legislation without requiring a two-thirds vote, because they are charities that ought to be sustained; charities about which there is nothing in the shape of a narrow local character, but institutions to which are sent the infirm and the deaf and dumb, from every part of the State. There is another class of institutions, and I desire to speak particularly now of that one which has been so warmly commended by the gentleman from Richmond [Mr. E. Brooks]. That is not a State charity, but it is one that has undoubtedly added vastly to the best interests of the State, by ministering to the wants of the helpless, and educating and reforming children who have been sent to it, or whom it has taken up. That institution, I understand, is required to report annually to the State, and it receives a class of juvenile delinquents from in and around the city of New York, who, without some such institution, would be a source of great embarrassment to the authorities of the city and the people of the State. It is an institution which tends very much to reduce the amount of crime, and to reform those who come under its influence. I think the Legislature should be at liberty to lend its aid to it, when necessary, without a two-thirds vote. The State itself has, in its western part, an institution for the same purpose, the Western House of Refuge, and I think that this one in the city of New York should be placed in precisely the same position with the other. This amendment which I have offered, proposes to except these institutions from the operation of that part of the section under consideration, which would require that appropriations for such purposes should be made by a two-thirds vote in the Legislature. I think it is right that they should be excepted from that provision, and that no obstacle should be thrown in the way of their receiving their legitimate aid from the State.

Mr. ALVORD—Will the gentleman answer me a question? Have not those charities always received aid from the State? and have they ever received it except by a two-thirds vote?

Mr. RUMSEY—They have always received aid, but whether by a two-thirds vote or not, I do not know and do not care; but I hope they will not be required to have a two-thirds vote of the Legislature in order to get it.

Mr. AXTELL—I now move the previous question.

The question was put on the motion of Mr. Axtell on ordering the previous question, and it was declared carried.

The question was then put upon the amendment offered by Mr. Rumsey, and it was declared lost.

The question then recurred upon the amendment of Mr. Rathbun.

Mr. E. BROOKS—Upon that I call for the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered, and the amendment was declared lost by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Barker, Carpenter, Case, Cassidy, Cheritree, Church, Conger, Field, Folger, Fowler, Houston, Hutchins, M. H. Lawrence, Magee, Rathbun, Reynolds, Rumsey, Schoonmaker, Seaver, Sheldon, Van Cott, Wales, Williams—24.

Noes—Messrs. Alvord, Archer, Axtell, Ballard, Beadle, Beckwith, Bell, Bickford, Bowen, E. Brooks, E. P. Brooks, E. A. Brown, W. C. Brown, Chesebro, Cooke, Corning, Curtis, Duganne, C. C. Daught, Eddy, Ely, Eudress, Fuller, Goodrich, Gould, Graves, Hadley, Hale, Hand, Hardenburgh, Harris, Hatch, Hitchcock, Ketcham, Kinney, Krum, Laudon, A. Lawrence, Lee, Livingston, Lew, Ludington, McDonald, Merwin, Miller, A. J. Parker, C. E. Parker, Pond, President, Prindle, Prosser, Rogers, Root, Roy, L. W. Russell, Silvester, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Verplanck, Wakeman—63.

The PRESIDENT announced the question to be on the substitute to the section proposed by Mr. Church.

Mr. ALVORD called for the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered.

Mr. PROSSER—I move to slightly amend this, so as to read "charities hitherto controlled and supported by the State." I propose this as an amendment to the substitute.

Mr. E. BROOKS—I hope that amendment will not prevail. There may be some new charities growing up in our enlightened age of the world that have not yet attracted the attention of the gentleman or of this Convention. I will suggest one, for example—a foundling hospital. In my judgment, there ought to be such an institution in this State.

The PRESIDENT—The Chair will state that, under the previous question, neither amendments nor debate are in order.

The question was then put upon the substitute to the section proposed by Mr. Church, and it was declared carried by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Archer, Ballard, Barker, Beadle, W. C. Brown, Carpenter, Cassidy, Chesebro, Church, Conger, Corning, C. C. Daught, Folger, Fowler, Goodrich, Gould, Hadley, Hardenburgh, Houston, Hutchins, M. H. Lawrence, Lee, Livingston, Lew, Magee, McDonald, Merritt, Morris, C. E. Parker, President, Prosser, Rathbun, Reynolds, Rogers, Roy, Rumsey, Schoonmaker, Seaver, Silvester, Sheldon, Stratton, Van Cott, Wales, Williams—46.

Noes—Messrs. Alvord, Axtell, Baker, Beckwith, Bell, Bickford, Bowen, E. Brooks, E. P. Brooks, E.

A. Brown, Case, Cooke, Curtis, Duganne, Eddy, Ely, Eudress, Field, Fuller, Graves, Hale, Hand, Harris, Hitchcock, Ketcham, Kinney, Krum, Laudon, A. Lawrence, Ludington, Merwin, Miller, A. J. Parker, Pond, Prindle, Root, L. W. Russell, Smith, Spencer, S. Townsend, Van Campen, Verplanck, Wakeman—43.

Mr. CHURCH—There is one more section—a new section that I offered the other day in Committee of the Whole—about drawing money on the warrant of the Comptroller. It was adopted as a new section.

Mr. BICKFORD—A correction is necessary in the eleventh section. The words "twelfth and thirteenth," in the first line, need to be changed to "ninth and tenth," as the sections are now arranged. Probably the change may be made by unanimous consent.

The PRESIDENT—This amendment will be made, as a matter of course, by the Secretary.

The SECRETARY read the section proposed by Mr. Church, as follows:

"No money shall be drawn from the treasury of the State, except in pursuance of an appropriation by law, and on the warrant of the Comptroller."

Mr. CHURCH—I desire to offer the following amendment as an addition to that section:

"And all bonds, stocks and other securities issued by the State shall be signed by the Comptroller on behalf of the State."

Mr. GRAVES—I would like to inquire what other officer in the State has drawn money?

Mr. CHURCH—There are two other officers. The auditor and the superintendent of public schools are permitted to draw money from the treasury. This section limits the power to draw money from the treasury by warrant of the Comptroller of the State. I find, on looking at the laws, that two years ago the Legislature authorized the auditor to sign State bonds instead of the Comptroller, who has always, ever since the organization of the State, signed the bonds of the State, whose signature is as well known in the markets of Europe as in this country; and I desire to put it back, so that the Comptroller shall sign all State securities.

The question was put on the amendment offered by Mr. Church, and it was declared adopted.

The PRESIDENT announced the question to be on the section as amended.

Mr. SCHOONMAKER—I move to strike out that portion of the section requiring all warrants to be signed by the Comptroller. That I suppose is intended to reach the warrants now drawn in reference to the canal money. The Comptroller never has, since the organization of the government, since the canal fund has been created—drawn any warrant in reference to the canal money. The canal fund, when it was originally created, was put in the custody of the commissioners of the canal fund, and the money was deposited to the credit of the commissioners of the canal fund, and drawn out upon the checks of the commissioners of the canal fund, and never upon the warrant of the Comptroller. That practice continued until 1848, when the office of auditor was created, and then the money under that law, was directed to be deposited in the

treasury, to the credit of the Treasurer, on account of the canal fund, and then no canal moneys were authorized to be drawn except upon the warrant of the auditor, countersigned by the Treasurer. That provision has operated well so far—has always operated well. The object of adopting that provision, was that the money being deposited in the bank, to the credit of the commissioners of the canal fund, and being drawn out by their check, it was necessary that the majority of the commissioners of the canal fund should in all cases sign checks for drawing the money out of the treasury. And the result of that was, that checks were signed in blank by the commissioners of the canal fund, and left with the secretary of the commissioners, for him to fill them out as occasion might require. In order to obviate that difficulty, this provision was made, authorizing the deposit of the money in the treasury to the credit of the canal fund, and requiring it to be drawn out upon the warrant of the auditor. There is another objection to that provision requiring all moneys to be drawn out upon the warrant of the Comptroller. We know now that the moneys, or principal part of the moneys, drawn upon the warrant of the Comptroller, are not signed by him. I doubt whether the gentleman from Orleans [Mr. Church], when he was Comptroller, signed one out of a hundred, or one out of a thousand of the warrants that were drawn at the time he was in the office. The warrants are drawn by the deputy comptroller. Adopt that provision and you adopt a provision requiring all warrants to be drawn by the Comptroller, and the result of that will be that the Comptroller, who is an officer that is not always in the city, will be compelled, for the convenience of the public, for the convenience of the public creditors, to sign his warrants in blank and leave them with his deputy in his office to be filled up: and that never should be allowed. No provision should be adopted in the Constitution which should require that. If you insert this provision in the Constitution, requiring all warrants to be signed by the Comptroller, you never can draw a dollar of money out of the treasury unless you have the Comptroller's signature, and you will never have that unless he signs it in blank. And therefore I think it is not a wise provision to be in this Constitution, requiring all warrants to be drawn in that way.

Mr. CHURCH—The gentleman who has just sat down having once occupied the position of auditor exhibits a little pride of opinion upon this subject. He is entirely mistaken in supposing that the Comptroller does not sign warrants himself, and I will guarantee that if he will examine the records while I held the office of Comptroller, he will not find a single warrant but bears my own proper signature—not one; and that is the uniform practice—for the Comptroller himself to sign the warrants.

Mr. SCHOONMAKER—I would ask the gentleman if he has never signed them in blank and left them with the deputy in his office to be filled up?

Mr. CHURCH—Never, sir. I never signed a warrant in blank in my life—never. In relation

to this subject it seems to me that it is very clear that we should have one head to our financial department. That head is naturally the Comptroller of the State, and no practice is more vicious or injurious than to allow two, three or four public officers to draw money from the treasury. In relation to these canal moneys I insist upon it that the Comptroller should have the general supervision of drawing money from the treasury. It should not be left to the auditor of the canal department, an office created as a mere clerkship. He was called down to the year 1848, the chief clerk of the canal department. He received his appointment from the commissioners of the canal fund, and he was under the control, practically, of the Comptroller; for the commissioners of the canal fund could hold no meeting without the attendance of the Comptroller. The Comptroller is practically the officer who controls the commissioners of the canal fund, and without his presence they can not even hold a meeting. And I insist upon it that this legislation which has grown up building up this department of auditor has done more to produce confusion, conflict, fraud and disturbance in the management of our State finances, and the finances of the canals, than every thing else put together. You have interfered with the harmony of the Constitution of 1846 by building up a department there in conflict with the departments contemplated by that Constitution. How is it at Washington? The Secretary of the Treasury is at the head of all the finances of the government. He has his bureaus, important bureaus, at the head of which are placed competent men, but they are all under his general control or supervision, and the vast financial system of this great country is managed by one man. Can we not in this State place our finances under the general supervision of one man, whom we can hold responsible, so that when any money is wrongfully drawn we can place our finger upon the public officer who does the act? It is this division of responsibility, it is this frittering away of the powers of government, that has produced all the difficulty in the administration of affairs at the State Hall for the last few years. You have built up your auditor's department; you have built up your contracting board, if not in violation yet outside of the Constitution of 1846, and you have imposed duties upon various public officers, so that no man can put his finger upon an act and say to a public officer, "you did it." I propose to have the financial officer of the State control the business of the public treasury. Of course he must have his subordinates. There must be a head of the canal department, and the details of the business will be done by men of whom the Comptroller will have the general supervision, and he will be held responsible for every dollar drawn from the treasury. And so with reference to the superintendent of public schools, I insist upon it that it is a dangerous and injurious practice to allow more than one public officer to draw money from your public treasury.

Mr. SCHOONMAKER—The gentleman has alluded to my occupying the office of auditor, and says I have some feeling about that matter. I

might retort upon the gentleman and say that he has occupied the position of Comptroller, and has some feeling on that subject. We all know, with reference to the canal fund and the canal money, that it has always been the policy of the State to keep the canal fund separate and distinct from the general fund—never to have any mingling of those moneys. Those moneys are appropriated and set apart for specific purposes, for the payment of debts in relation to the canals and the disbursement of moneys in relation to the canals; and therefore it is proper that being thus kept distinct and separate, and having a separate set of books, that they should be under the charge of a particular officer. The auditor, under the general direction of the commissioners of the canal fund, has the special charge of the money. He has the auditing of the accounts in reference to the canal; and who is a more proper officer to draw the warrants than the one who has the duty of auditing the accounts for the payment of which warrants have to be drawn? I contend that it is proper, that it is highly proper the auditor should be authorized to draw the warrants, and not the Comptroller. The Comptroller never attends specially to the duties of the canal fund. It is quite sufficient to attend to his own duties, the duties properly connected with that office.

Mr. ALVORD—I trust, sir, that the motion of the gentleman from Ulster [Mr. Schoonmaker] will not prevail. I can add hardly any thing to what has been said by the gentleman from Orleans [Mr. Church], that the great trouble in the past has been this creation by the Legislature, of an original office, vested with power independent of the other offices of the State, and unknown to the Constitution. I have no sort of question, myself, but what it is a violation of the intent—a violation of the spirit of the Constitution of 1846; and if we had stood by that Constitution in its plain meaning, import and intent, with reference to these questions, we should have been in a vastly different state, so far as regards our finances, from what we are to-day. If it is necessary that this office of auditor should be continued for the purpose of operating under the control of the commissioners of the canal fund, it is no more or less than a simple bureau, like almost any other position in the office of the Comptroller, having direct application to a particular matter. Now, there is another bureau in the Comptroller's office, where there is an auditor. He examines the accounts from the various portions of the State, passes upon them and hands them to the Comptroller. He in turn examines them and gives the necessary vouchers. So it may well be in this case; the auditor of the canal department, or the commissioner, the chief clerk of the commissioners of the canal fund, or whatever you may call him, will look over accounts and audit them. Then let them go to the Comptroller, let him determine upon them and draw the warrants upon the treasury. If a half dozen persons can draw on the treasury there is no responsibility. There will be no difficulty about drawing the money, as some gentlemen seem to fear. There are separate and distinct accounts in the treasurer's office from which the Comptroller draws. The money paid into the treasury

is credited to the specific fund to which it belongs, and when the Comptroller draws his warrants it is upon one of these specific funds. This is just as much a division of the money as it is to have a part or all of the moneys mixed together, and a portion of it drawn by the superintendent of public instruction, and a portion by the Comptroller.

The question was put on the motion of Mr. Schoonmaker, and it was declared lost.

Mr. RATHBUN—If my amendment is now in order I wish to submit it.

The SECRETARY read the amendment as follows:

"Taxes upon the real estate and personal property of this State shall be equal upon all such property liable to the payment of taxes."

Mr. DUGANNE—I desire to offer an amendment.

The SECRETARY read the amendment as follows:

"The taxes on all real estate leased or rented shall be assessed on a basis which shall be determined by reckoning the actual rents as ten per centum per annum on the real value of the leased or rented property."

The PRESIDENT—The Chair would inquire of the gentleman from Cayuga, [Mr. Rathbun], whether his amendment is offered as a general amendment?

Mr. RATHBUN—I offered it in two senses.

Mr. DUGANNE—Mr. President, I should have been very glad indeed, if the Committee on Finance had seen fit to give us some definite policy for the equalization of taxation in our State. I should have been glad to have had the subject discussed in committee, and reported upon in the shape of an amendment which would reach the complaint so greatly neglected by our assessors. I, possibly, might have reminded one of my friends, a distinguished member of the committee, belonging to the city of New York, of the known fact that there are tax payers in that city whose personal property is rated at fifteen hundred thousand dollars, who pay only at the rate of one hundred thousand. And of more than one instance where a wealthy citizen goes to the tax assessor, and, of his own volition, asks that his personal property shall be increased fivefold. But the burden of taxation is not wholly borne by the dwellers in palaces or the recipients of princely revenues. It is not wholly or mainly endured by the holders of title deeds, and stocks, and bonds, who assume to style themselves the tax payers of this country, and on that assumption base some claim to priority of rank or consideration. No, sir! It is on two classes of our citizens that the support of government is mainly thrown—on the laboring farmers of your rural districts, who plow, and sow, and gather the harvest of toil, and on the laboring mechanics and operators of your towns and cities, whose daily bread is eaten in the sweat of their brows. These are the real tax payers; these the pediments on which rest the columns of your financial structure, and the capitals and architraves of your body politic. The working farmer must pay his proportion of tax whether the market for his crop shall be remunerative or not. The city toiler

must pay his tax, in the shape of exorbitant rent and extortionate food prices, though it require the last dollar that he earns, and though his children go ragged and supperless. Talk to me of tax payers, sir! I deny that the owners of bonds, and stocks, and lands, who clamor periodically about high assessment, have ever felt the weight of taxation. What are they, indeed; but the agents of our real tax payers? Dwellers in luxurious habitations though they be, owners of lands, and blocks of houses, and mines, and mills, and manufactures, I declare that they do not pay the taxes which they claim to pay, but that, for every dollar assessed upon their accumulated wealth, they exact, as a rule, a hundred per cent additional taxation from the laboring consumers on whom they charge the increase, and from whom they will inevitably obtain it, in the shape of enhanced prices for the necessities of life, the bread, the fuel, the clothing, the wretched shelter which capital doles out to tax-paying poverty. Do you tell me that the real estate agent, the middleman, who collects his weekly rents from the miserable occupants of a New York tenement-house, is a payer of taxes on the estate which is farmed out to him, and on which he makes the most he can? Do you affirm that the owner in fee of that tenement-house, who employs the agent and demands of him a total quarterly revenue, covering all repairs, and ten or fifteen per cent over, is the genuine payer of taxes on the property? You know it is not so! You know it is the tenant who pays all, who answers for all, or if he fails to answer, is thrust into the street. Do you tell me that the owner or agent assumes a dollar of tax without levying the amount and more upon the occupants of his premises? Who, then, is the real tax payer? On whom does the weight of taxation weigh, steadily and remorselessly, until it crushes him into the poor-house or the grave? But why, then, Mr. President, do we hear these plaintive cries of property owners and their brokers against the high taxes which they never pay? Are they pleading the cause of the poor rent payers whose agents or representatives they become at the assessor's office? Do they pray that taxes shall be lightened, in order that the buyers of small wares and small quantities, the toilers for scanty food, the burrowers in cellars and the shivering or stifled dwellers in hovels, may be benefited through a decrease of their daily burden? I confess that my imagination is not vivid enough, my faith is not so credulous, as to believe this generous motive to be the governing one of our friends, the so-called tax payers, who claim to represent all taxable property. No, sir; it is because your avaricious owner or greedy agent, desires to retain for his own use the taxes paid by the poor man; it is because he would add to his ten or fifteen per cent the additional sum that may represent the difference between a greater and a less assessment, and which he will not forget to levy on tenants or consumers, and thus swell his own annual income without relaxing a single burden from those who pay all. It is this motive, sir, which lies at the bottom of that fine public spirit and prudent political economy so loudly boasted of by *pseudo* tax payers, who pay

no taxes, and by citizens who adroitly shift from themselves the burdens of citizenship. But are gentlemen sensibly aware of the entire significance of tax paying as applied to rent payers, consumers of small quantities and earners of daily bread—in effect, the great mass of our poor who live from hand to mouth? We have been startled, if not appalled, at the array of figures presented by the chairman of the Finance Committee, by which he demonstrated our liabilities of State and national taxation to be one hundred and eighty millions of dollars for the current year. It is an enormous total, and represents, as has been stated, a large individual assessment. Those figures, I am reminded, were used with marked political effect during the late canvass. But I think the honorable gentleman from Orleans might have made a more minute calculation, and arrived at still more astounding conclusions regarding the burdens borne by our laboring people, on the estimate of annual taxation made by him. Let us ignore the real and personal taxable property of the State, for a moment, and estimate upon the value of LABOR and the average of income among our citizens. Let us say that there are 900,000 producing laboring males in the State, from the age of eighteen to seventy five, which, on the basis of our largest total vote, will, I think, be found not far from the mark. Estimating that the average earnings and income of each male, between the above ages, is \$500 per annum, or ten dollars a week, we find the aggregate earnings or income of 900,000 will amount to \$450,000,000. Here, then, we have the value of labor or living for these 900,000 males to be \$450,000,000. Divide these four hundred and fifty millions by 180,000, the amount of taxation for the year, and it will allot \$250 as the share or burden of each laboring or producing male, or two-fifths of his entire income paid for taxation—the remaining three-fifths, the remaining \$300 out of the \$500 of his income, representing the cost which his living would be to him, were it not burdened by enormous taxation. In other words, if this taxation could be removed or lightened, his means to live better or save more would be, or ought to be, increased in the same ratio. But this is not all, sir, for if we suppose that a hundred thousand property holders and agents, or two hundred thousand of these men, are enabled to shift their taxation every year upon the laboring consumers, it must follow that the burdens of the latter class are augmented, and that, instead of two-fifths it may be three-fifths, or three-quarters, of each man's income that is absorbed by taxes before he can realize food, clothing, or shelter for himself and family. Is not this a frightful picture? and is it not essentially true? Let the man who doubts and who would experiment, go out into the wilds of a western forest, where the tax-gatherer and rent collector never come, and let him compare the cost of his subsistence there with that of a dweller in New York tenement-houses! Take away, Mr. Chairman the infinitesimal taxation of our civilized society, where a dozen brokers stand between producer and consumer everywhere, and you will find misery and squalor vanish like the mists of a night when the warm sunlight pierces them.

Vainly, then, in view of the actual and oppressive proportion of their incomes, which our laboring fellow-citizens pay in the shape of taxes—direct and indirect—vainly, I say, shall we attempt their relief by the mere decrease of our assessments on real and personal estate. Decrease your taxes, sir, by ten, twenty, or even fifty millions of dollars, per annum, on the present assessments of landed property in our State, especially in the cities, and what guarantee have you that the *bona fide* tax payers will be benefited? Sir, you will probably put a very dollar of the reduction into the pockets of owners and middlemen—non-tax payers,—while you lift not a shilling of burden from the landless, the dependent, the industrious poor—the people who pay all the taxes, and whom you delight to talk of representing in this Convention. High taxes forever furnish the pretext for high rents, high prices and low wages: but when did you ever hear that low taxes begot low rents, cheap bread, or increased remuneration for labor? The market of demand and employ may govern the tariff of purchase and sale; but the difference between high and low taxes is merely a premium that government allows to the owner or broker who collects assessments in the guise of rent or prices, and permits neither tenant nor consumer to retain a penny of it. Go where you will, and measure the ratios of taxation; trace the history of public burdens since the first tenth was paid to a priest or a ruler, and you will find that no assessment has ever been made upon property or proprietors that has not at once been levied upon labor and laborers. If property, or its usufruct, could have been compelled to bear its equal proportion of tax, there would never have existed such oppressed classes as the Soodra and Pariah of India, the shepherd slaves of Egypt, the helots of Greece, the plebeians of Rome, the thralls of Britain, the vassals of feudal ages, the serfs of Russia, or the black bondmen of America. Could property be equally and impartially assessed for the support of government, there would be less disparity in social conditions; palaces would not frown over hovels; the wheels of luxury would not drive penury to the wall. “My satraps and governors,” said a Persian monarch, “are sponges that I squeeze when I want money.” “True, O king!” responded his wise men; “but your people’s substance is sucked up by these sponges!” Property, under our system of taxation, is simply the sponge of government, and the labor of the people must necessarily fill it. I now ask, sir, by this amendment, that the loaners of real estate for use and hire shall be placed on the same footing with those who loan money on interest. I demand, sir, that if we cannot decrease the burdens of exorbitant rentals which bear so heavily on the people, we shall, at least, derive from those who *live and gain* by high rentals a just *pro rata* tax upon the real value of their capital.

Mr. AXTELL—I move that the Convention do now adjourn.

Mr. ALVORD—I would ask the gentleman from Clinton [Mr. Axtell] to withhold his motion for a single moment. I desire to make a motion that the report of the Committee on Canals be made the special order for to-morrow.

The PRESIDENT—The Chair so rules. It is the special order.

Mr. E. BROOKS—I rise to a point of order. The gentleman’s motion was that immediately after the consideration of the report of the Committee on the Finances of the State the subject of canals be considered.

The PRESIDENT—It is the order of the Convention now.

Mr. VERPLANCK—I would like to ask the gentleman if he designs to supersede this special order to-morrow, and leave this matter unfinished, and go on with the report on canals?

Mr. ALVORD—No, sir; it will be the special order to-morrow after this subject is finished.

The PRESIDENT—The Chair would inform the gentleman from Onondaga [Mr. Alvord], that that would be the special order for to-morrow by an existing order of the Convention. The question is whether this report shall be continued.

Mr. ALVORD—I move that this matter be continued as the special order for to-morrow.

Mr. FOLGER—I move to amend by adding “and from day to day until it shall be concluded.”

Mr. ALVORD—I accept the amendment.

The question was put on the motion of Mr. Alvord, and it was declared carried.

Mr. HAND—I move, when we adjourn, it be until nine o’clock to-morrow morning.

SEVERAL DELEGATES—No, no.

The question was put on the motion of Mr. Axtell, that the Convention do now adjourn, and it was declared lost, on a division, by a vote of 37 to 38.

Mr. ALVORD—I call the attention of the Chair to the fact that there is no quorum voting.

A DELEGATE—There is a quorum in the house.

The PRESIDENT—Gentlemen in the outer passage will please take their seats and vote.

The question was again put on the motion to adjourn, and it was declared carried, on a division, by a vote of 43 to 39.

So the Convention adjourned.

WEDNESDAY, November 27, 1867.

The Convention met pursuant to adjournment.

Prayer was offered by Rev. Mr. LEONARD.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. ARCHER—Having become convinced, after careful canvassing, that we shall not be able to secure a quorum for Friday, I offer the following resolution:

Resolved, That when the Convention adjourns this day, at the close of the morning session, it shall be until Monday evening, December 7, at 7 o’clock.

Mr. ALVORD—I am opposed to the passage of that resolution. We are now in a position where, if we desire to get through with our business before the holidays, we want all of the time that we can have for that purpose. If, taking the course which has been pursued by this Convention, with but one or two exceptions up to this time, we adjourn over until Monday, it is virtually an adjournment until Tuesday morning. The result is, that after that time you have only twenty-

three days, and of these you have three Sundays, three Mondays and three Saturdays, giving you but fourteen working days in which to do up the business that you contemplate doing. Now, sir, it is absolutely necessary for us, in order that we shall come to the conclusions that are proper in regard to the matters which are still before us, to use every available moment of time previous to the 25th of December; and there is no reason, in my opinion, why we should take four days for the purpose of passing over Thanksgiving. I have no objections myself, if it is thought to be desirable, that we should adjourn until Friday evening at seven o'clock; but to adjourn over until Monday evening, virtually losing Friday and Saturday and Monday, and to continue to do the same in the future, will leave us but twelve or thirteen days in which to do the business of this Convention. I am opposed to this resolution. I trust that it will not receive the approval of the Convention; and I call for the ayes and noes upon its passage.

The PRESIDENT—Does the gentleman from Onondaga move an amendment?

Mr. ALVORD—I move this amendment: that when the Convention adjourn to-day, it adjourn till Friday evening, at seven o'clock.

Mr. GRAVES—I move an amendment that when the Convention adjourn it adjourn to Friday morning, at ten o'clock.

Mr. ALVORD—I accept that amendment.

Mr. McDONALD—I move an amendment that when the Convention adjourn to-day it adjourn until Tuesday morning next, at the usual hour, and the reasons for my amendment are these; I am as desirous as any gentleman, and by my attendance here I have tried to show it, that this Convention should continue to work, and should be here every day at work until its business shall be finished. But if there is any one thing more than another that is wearing out the patience of members here present, it is the fact that we are here so much of the time without a quorum. Now, we know there will be no quorum here after Thursday, either on Friday or Saturday, or until next week; we know it, because there has been an effort made to get a quorum, an appeal to members to stay here, to which appeal there has been no response; so that we know it perfectly well, and we might just as well meet facts fairly and squarely, without any dodging. We know that we will not do the State any service after this day until next Tuesday morning; therefore let us be straightforward and adjourn right over until then, and lose our pay, as we ought to. I do not believe in these adjournments, keeping within three days, for the purpose of drawing pay. It is bad enough for a mere majority of us to sit here and draw pay for ourselves, and for those who are absent, especially when some of our members are drawing pay in the United States Congress—making money by staying away—that I say is bad enough, but when we add to that by requiring members to stay here when we know there will be no quorum, and adjourn so as to draw their own pay, and also that of absentees, it is rather too much, and I am opposed to it. So long as we can keep a quorum here, so long as there is the slightest possibility

of keeping a quorum here, I believe in staying and working every day except Sunday, and I care not how late at night we work, or how early in the morning. But it does seem to me that it would be entirely wrong for us when we know that we cannot have a quorum, in order to do business, to pretend to keep this Convention in session, drawing pay. We had better adjourn and let those persons go home who can, and next week make one more trial, and see if we cannot take up the business and get through with it.

Mr. ALVORD—In answer to what the gentleman has said in regard to this matter that we have been tiding along ever since we have been here with barely a quorum, and a large portion of the time with no quorum, and if there is any force in the remarks of the gentleman upon that point, it goes to the root of the whole matter, and if we are to take his position, that members are troubled and stay away because there is not a sufficient number here to do business, we had better adjourn without day named. Sir, we have got the work to do, and so far as we who are here are concerned, the responsibility of the loss of the work will not rest upon us. Let each of us do his duty in the matter, and leave it to others to answer for their own sins of omission. It strikes me that, so far as this matter is concerned, it is not a question of pay at all. If the gentleman from Ontario [Mr. McDonald], or any other gentleman, has a mind to introduce a resolution that we shall work without pay during the balance of the time that we are here, I am entirely willing to vote for it. But I am anxious that the work of this Convention, if it is to be done, shall be done with as little delay as possible. If we go on tiding along in this way, the result will be that we will stay here over the holidays, and will be put in the humiliating position of seeking another place, in the city of New York or elsewhere, in which to complete our labors.

Mr. S. TOWNSEND—I would like to ask the gentleman whether, as a matter of necessity, we must give way to the Legislature?

Mr. ALVORD—I take it that, under the circumstances in which we are placed, although we may have an abstract right to continue the use of this hall, we will give it up to the lower branch of the Legislature when they come here in January; and if our labors shall not be then completed, we will be under the necessity of seeking some other place in this city or in New York to complete them. Now, from the indications of the last week or ten days, there is a good prospect of our being able to finish our work before the holidays, except that it may require a larger committee on revision to go to work and put what we have done in proper shape, and then to call us together for a day or two to pass upon it finally after revision. By working in this way we can be better accommodated ourselves, and we can better accommodate the people of the State, too, by discharging our duties here. I hope, therefore, that the amendment of the gentleman from Ontario [Mr. McDonald] and the original proposition of the gentleman from Clinton [Mr. Axtell] will both be voted down.

Mr. STRATTON—I have listened to the re-

marks of the gentleman from Onondaga [Mr. Alvord], with a good deal of interest. He has been one of the faithful men of this Convention, and he is entitled to a great deal of credit for his faithfulness in attendance; but I have myself been here about as many days perhaps as he has, and I can therefore speak of those things of which he has spoken; I mean in regard to a quorum of this body being generally present. I do not think he states what is the fact when he says that the exceptions have been the days on which we have had a quorum. I think the exceptions have been the days on which we have had no quorum; for during the first part of the session we were never without a quorum, unless it was upon a Saturday. I am in favor of the resolution offered by the gentleman from Wayne [Mr. Archer], to adjourn over until Monday night. There is not probably a gentleman present who does not desire to spend the thanksgiving at home, and it is impossible to get back from the remote parts of this State in time for a session of this Convention on Friday evening, and still more so, to do so in time for a session on Friday morning. Gentlemen might get here Friday evening. I might come from the city of New York leaving there at eleven o'clock as I did on Monday last, in order to be here to attend the evening session of this Convention, and what would we find? On that occasion I found a quorum here as I would probably find if this resolution to adjourn until Friday evening, should be adopted, but instead of doing the Convention work with that quorum last Monday evening, they sat here about an hour and three quarters and then adjourned to hang around until bed time with nothing to do. That is not the way that I want this Convention to work. I am willing to leave my business and come here to attend to my duties as a member of this Convention, but when we are here with a quorum we ought to work hard and regularly, and we might very well work every evening until half-past ten.

Mr. VERPLANCK—Will the gentleman permit a question? I wish to ask him, on how many occasions we have adjourned our evening session before nine o'clock?

Mr. STRATTON—My recollection is that we have adjourned oftener before nine o'clock than after it.

Mr. VERPLANCK—The gentleman is very much mistaken.

Mr. STRATTON—I think we have adjourned generally before or about that time, but now inasmuch as it is apparent that we cannot get a quorum here for the meeting on Friday, it is the dictate of prudence and sound judgment that we should adjourn over till Monday evening, and the business of this Convention will be forwarded by doing so, and then proceeding with a quorum to the performance of our duties. I hope the resolution of the gentleman from Wayne [Mr. Archer], will prevail.

Mr. E. BROOKS—I do not think there is any profit in this discussion, and I therefore move the previous question.

The question was put on the motion of Mr. E. Brooks and it was declared carried.

The question was put on the adoption of the

resolution offered by Mr. McDonald, to adjourn till Tuesday morning, December 2d, and it was declared lost.

The question then recurred on the amendment of Mr. Alvord, to adjourn to Friday at ten A. M.

A DELEGATE—I demand the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered, and the amendment was declared adopted by the following vote:

Ayes—Messrs. A. F. Allen, Alvord, Artell, Baker, Ballard, Barker, Beckwith, Bickford, E. A. Brown, Case, Chesebro, Colahan, Cooke, Corning, Duganne, Eddy, Ely, Endress, Folger, Fuller, Gould, Graves, Hale, Harris, Hatch, Hitchcock, Ketcham, Kinney, Krum, M. H. Lawrence, Lee, Loew, Ludington, Merwin, Miller, Morris, A. J. Parker, Rathbun, Roy, Seaver, Smith, M. I. Townsend, Wakeman, Wales, Williams—45.

Noes—Messrs. C. L. Allen, Archer, Beadle, Bowen, E. Brooks, E. P. Brooks, W. C. Brown, Carpenter, Cassidy, Church, Conger, Corbett, Curtis, C. C. Dwight, Field, Francis, Hadley, Hardenburgh, Houston, Hutchins, Landon, A. Lawrence, McDonald, Pond, President, Prindle, Reynolds, Rogers, Root, Rumsey, B. W. Russell, Schoonmaker, Silvester Sheldon, Spencer, Stratton, S. Townsend, Van Campen, Van Cott—39.

The question then recurred upon the adoption of the original resolution as amended.

A DELEGATE—I demand the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the resolution of Mr. Archer, as amended, and it was declared adopted by the following vote:

Ayes—Messrs. A. F. Allen, Alvord, Artell, Baker, Ballard, Barker, Beckwith, Bickford, E. P. Brooks, E. A. Brown, Case, Chesebro, Colahan, Cooke, Corning, Duganne, Eddy, Ely, Endress, Field, Folger, Fuller, Gould, Graves, Hale, Harris, Hatch, Hitchcock, Ketcham, Kinney, Krum, M. H. Lawrence, Lee, Ludington, Merwin, Miller, A. J. Parker, Rathbun, Seaver, Smith, M. I. Townsend, Wakeman, Wales, Williams—44.

Noes—C. L. Allen, Archer, Beadle, Bell, Bowen, E. Brooks, W. C. Brown, Cassidy, Church, Conger, Corbett, Curtis, C. C. Dwight, Francis, Hadley, Hardenburgh, Houston, Hutchins, Landon, A. Lawrence, Loew, McDonald, Pond, President, Prindle, Reynolds, Rogers, Root, Rumsey, L. W. Russell, Schoonmaker, Silvester, Spencer, Stratton, S. Townsend, Van Campen, Van Cott—37.

Mr. DUGANNE—I offer this resolution, which I send up to be read by the Secretary.

The SECRETARY proceeded to read the resolution as follows:

“Resolved, That the provisions of the act calling this Convention which forbids the payment of the per diem during the three days adjournment—”

The PRESIDENT—The resolution is not now in order. The special order for this morning is the consideration of the report of the Committee on Finance pending in the Committee of the Whole, and the pending question is on the amendment of the gentleman from New York [Mr. Duganne], which the Secretary will read.

The SECRETARY read the amendment as follows:

Moved to amend the amendment by adding thereto the following:

"The taxes on all real estate, leased or rented shall be assessed on a basis which shall be determined by reckoning the actual rents as ten per cent per annum on the real value of the leased or rented property."

The question was put on the amendment of Mr. Duganne and it was declared lost.

Mr. A. F. ALLEN—I propose an amendment to the amendment proposed by the gentleman from Cayuga [Mr. Rathbun]. It is:

"That the Legislature shall, at the first session after the adoption of this Constitution, provide by law that taxation upon real estate and personal property in this State shall be equal and uniform on all such property liable to taxation; requiring from every person in this State a sworn statement of the actual value of all property both real and personal in the possession of, or under the control of any such person."

Mr. VERPLANCK—We have discussed this question already at considerable length and I move the previous question.

The question was put on the motion of Mr. Verplanck, and it was declared lost.

Mr. McDONALD—Do I understand that this is an amendment or a substitute.

The PRESIDENT—It is an amendment.

Mr. McDONALD—To what?

The PRESIDENT—An amendment to the amendment of the gentleman from Cayuga [Mr. Rathbun].

Mr. RATHBUN—If it is in order, I accept that amendment.

Mr. McDONALD—I offer as a substitute Document 139.

The SECRETARY read the substitute offered by Mr. McDonald, as follows:

1. All property within this State (not *in transitu* through the State) including all choses in action owned by, in the possession of, or controlled by any resident person, partnership, association or corporation, shall be equally assessed and taxed according to the actual value thereof.

2. All deductions on account of debts shall be uniform as against the assessment of real or personal property.

3. All exemptions shall be uniform throughout the State, and the bill authorizing the same must receive the approval of two-thirds of all members elected to both branches of the Legislature.

4. Every resident person, partnership, association or corporation shall make a sworn return of all taxable property owned by, in possession of, or under the control of him or it.

Mr. McDONALD—I offer this substitute for reasons which I will state briefly, without argument. By reading it, the Convention will see that there are simply two principles adopted. The first is that all property shall be taxed, leaving the question to whom it shall be taxed entirely with the Legislature; the second is, that every person shall make a sworn statement of all property in his possession, under his control, or owned by him. By these two principles we first obtain the property, and then we provide how it shall be taxed. There are two other sections which relate to the question of

deduction on account of debts or exemption from taxation. Now, regarding this body bound as a Constitutional Convention to adopt principles, not particulars, it seems to me all we can do is to make certain rules which must be followed in granting either deductions or exemptions. The rule I propose in granting deductions is, that they shall be uniform as against the assessed value of real and personal estate; and I do not believe there is a member of this Convention who does not regard that rule as just and one which should be adopted. The great evil at present in taxation is that debts are allowed as a deduction from personal estate and not as against real estate. There is where the wrong lies; and all I propose to do is to remedy this by leaving it to the Legislature to determine whether or not any debt, and if so, what debt, ought to be deducted. This is a question of legislation, purely. It is a question about which people disagree very much, and in regard to which we in this Convention cannot very well decide. If this Convention should decide that no debts should be deducted, then we should find various cases arising that could not be properly disposed of. I propose that we shall not decide that matter here, but let each individual instance go down to the Legislature, where they have more time and can more properly consider and decide the cases as they come before them. There is another case which is often stated, that of persons, non-residents of this State, who send their property to New York to be sold. They have already paid a tax upon it in the State where they live, and the question is, shall they be taxed upon it in this State also? Now, with regard to that we should not here decide. We should leave it to the Legislature. We should only settle here the rule that if any man desires to be exempted or exempted from taxation, he must make his case so clear that he can procure a two-thirds vote of the Legislature to grant his exemption, and that his exemption is the exemption of every body else in the same position throughout the State. I therefore submit that the proposition which I have presented is the one on which, if any, this Convention can agree. If you begin here in this Convention to say that no debts shall be deducted you will immediately raise the opposition of a large portion of this Convention. If you say that there shall be no exemption you immediately raise the opposition of another large portion, because here come the churches, and the schools, the public buildings, and various objects and various kinds of property that, it will be asserted, ought to be exempt. It does seem to me that those who wish to get any reform in taxation, and wish to establish any principle, must yield to persons who have their own individual interests and opinions with regard to the question whether there is to be—

Mr. KETCHAM—I rise to a point of order. The gentleman has forgotten that he agreed not to make a speech.

Mr. McDONALD—I do not know that I agreed not to make a speech. I agreed to state my opinions without argument. That is what I agreed to state.

The PRESIDENT—The Chair believes the

gentleman from Ontario [Mr. McDonald] to be a man of veracity. The Chair rules that the gentleman from Ontario must place his own construction on his promises. [Laughter.]

Mr. VAN COTT—I think the gentleman from Ontario is within his pledge. He is clearly giving reasons without argument. [Laughter.]

Mr. McDONALD—I am glad to have the certificate of the gentleman from Kings [Mr. Van Cott]. I do not wish to detain this Convention. I ask the gentlemen here in regard to this remedy of taxation, and I am willing to go for any thing that can remedy it in any way; but I submit, as a practical proposition, that if you begin to determine here, first, that debts shall not be allowed, and, second, as to what deduction shall be allowed, you will gain nothing; and if you will simply yield that, and leave that question to the Legislature to be determined under general rules, you may be able to gain two things—and that is what we are all striving for—that all property shall be taxed, and that every body shall be compelled to make a full return. It is alleged that a sworn return may make a great inducement to perjury, and that is made an objection. What I claim is, that under our present assessment laws, every man living in this State is, on account of his interest, guilty of subornation of perjury. We have assessors who have sworn to tax property according to what it would be taken for in payment of a good debt; and every one of us know that they do not do it. We every one of us know that they do not tax property for over one-third of what it would be taken for in payment of a debt, and we are every one of us interested and uphold them in it. If any assessor should undertake, in any town in this State, to do his duty, he would receive the public condemnation generally, and he never would have the privilege. I do not say the honor, of holding that office again. Now, with regard to laws of this kind, when every body is interested in defeating them, nobody will ever prosecute them; but if you turn it round and make every body swear as to what property he has in his possession, you get the honest man who has to swear to it, interested against the dishonest man. Honest men will state their property truly, and the minute they state it fully, they are interested in making dishonest men state theirs truly, and whatever they know they will bring forward to verify the statement. As the laws now are, we are all interested in having just as low a valuation as we can; we all want it, we all wink at it, and we all support the assessor who violates the law. The responsibility should rest on the man who takes the oath, and if any body sees fit to swear that he has not property when he has, let him take the responsibility. His neighbors will swear to the truth, and their interests are opposed to him, and they will see to it that his property is put upon the assessment rolls.

Mr. BECKWITH—I am decidedly in favor of the principle stated here but there is a portion of the resolution which the gentleman has brought to our consideration, to which it seems to me there are some objections. It is well if some measure can be devised that shall bring out

for taxation the personal property in this State; but the provision to which I have reference is one that seems to me very stringent, and one that a conscientious man will feel imposes upon him a great amount of labor that will be of very little service. You will see that it provides that "every resident person, partnership, association or corporation, shall make a sworn return of all taxable property owned by, in possession of, or under the control of, him or it." "Property in possession of," take, for instance to illustrate the position which I wish to bring to your consideration, my own profession. I am engaged in the collection of demands for gentlemen in various parts of the State, not only in my own neighborhood, but in New York, Albany, Troy, and other portions of the State. Now, I have the possession of those demands. I have a great many judgments. I have possession and control of them. I have possession of notes. I have occasionally possession of bonds and mortgages. Now, I have no objection to a provision that shall compel me to make a full disclosure of all these demands that I hold as trustee, but to make me furnish a list of all the notes and accounts and demands which I may receive from any individual in the State for collection, it seems to me would be requiring too much.

Mr. McDONALD—I doubt not that the Legislature will exempt all property that is simply in the hands of agents for collection, and the minute they exempt it you are not bound to return it at all.

Mr. BECKWITH—Gentlemen think they should exempt it, but I think it should be assessed, that the owner of that property should make a disclosure of all bonds, mortgages and notes in the possession of his attorney; but that attorney should not be called upon to make a full inventory of every thing in his possession. The owner should make a full disclosure. I think, and we should not exempt his bonds and mortgages. If this provision goes into the Constitution, the question then arises, can the Legislature pass an act that shall free attorneys from this responsibility of rendering a full account of every note, account, or demand that may be placed in their hands for collection? If that be the meaning of it, then certainly I think it is altogether too stringent and goes too far. If that is not the meaning of it I have no objection. I should like to see some provision that shall bring out this personal property for taxation, for I do not believe that over one-fifth of the personal property in this State is in fact taxed.

Mr. RATHBUN—I am opposed to this proposition of the gentleman from Ontario [Mr. McDonald], which he has offered by way of a substitute. It contains provisions which belong in the law to be enacted under a proper provision of the Constitution, as I apprehend. It is part legislation, and so far as it goes, perhaps not very objectionable; but the last section, adverted to by the gentleman from Clinton [Mr. Beckwith], is certainly one of very doubtful propriety, even as legislation, and would require amendment. In regard to this question of taxation, I have been anxious all my life, since I knew anything about the subject of taxation, that something should be

done, in order to render the taxation on personal and real property as nearly equal as possible. It has seemed to me always that the proper mode of taxation was to regard it as a tax upon property, ignoring persons; treating the subject of taxation as a burden to be borne by the property, real and personal. In my judgment, the true rule in regard to that taxation is, that it should be equal upon all real and personal property; that they should be treated precisely alike, without any discrimination in favor of one not made in favor of the other. If we look at it in the light of property, as taxation resulting from property, and apply the rule of equality, then we have a system that cannot be complained of by any body, either in regard to personal or real estate. If we look to the expense and cost of the protection of the various kinds of property, it will be very readily seen that the expense of the police of the State for the protection of property is many times larger for the protection of personal property than for the protection of real estate in this State. For a bank, an insurance office, a broker's office, a store of goods—all places where personal property is deposited; where values are concentrated; where burglary may load a man down with an immense amount of value—there you require an increased number of police, to watch and protect; and, when these crimes occur, to pursue and overtake and punish. Lands are very little subject to any thing of that sort. There is very little difficulty among the farming population of the State in regard to the protection of their property. The police of the country is nothing compared with what it is where property is concentrated; and just in proportion to the increase of personal property in cities, or in villages, or in the country, then is the necessity for an increased vigilance and efficiency on the part of the police. While this is so, and eminently so, under the present system, the personal property in the State of New York, three-fourths of it, at least, escapes taxation; and the real estate, requiring so much less expense, so much less protection is, in point of fact, taxed for the protection of the personal property of the State. Nothing can be more onerous or more unfair, or unjust, than that. While the one owes a large amount for its protection, it escapes taxation, and the other, requiring little expense to protect it, bears the burden of protecting itself and the personal property also. It is a matter of notoriety, and upon which I suppose there will be no question here, that the personal property in the State of New York is worth more than the real, while upon the assessment rolls, as I believe, it does not amount to one-third. The assessed value of all the taxable property in the State is \$1,600,000,000. Of this amount only three hundred millions of personal property is assessed. It is allowed to escape. The law provides for its escape. It provides no remedy by which a man can be compelled to disclose to the assessor in such a way as to enable him to put down upon the assessment rolls the fair and honest value of the personal property held by persons who are desirous of evading the law. We shall never have that system which will bring within the purview of the assessor and subject to an equal

amount of taxation the personal property of the State, until we settle the question that taxation shall be equal, upon real and personal property. Now every little cot that covers a poor family—every piece of land occupied by a man—every large farm occupied by a person, whether he has paid ten per cent upon the purchase price or not, must pay the full amount of taxation upon its assessed value. There is no exemption whatever; there is no escape from it. He cannot hide his land. The amount of debt goes for nothing. But, on the other hand, when you enter the precincts of an establishment, where you can find a hundred thousand dollars worth of personal property; the person in possession says—"I am in debt. The amount of my indebtedness and liabilities equals the amount of the property in my possession, and therefore I pay no tax." And he goes free. Thus the wealth on the one hand goes without taxation, and the poverty on the other hand, wherever it is found, in land or houses, is taxed to pay for the protection of the property which escapes any burden of the State. I have said substantially what I desired to say. I desired to call the attention of this Convention to the single principle announced in the amendment offered by the gentleman from Chautauque [Mr. A. F. Allen], as an amendment to my own, and that is, that by the Constitution of the State it shall be declared that taxation upon the real and personal property of the State, liable to be taxed, shall be equal. It would not interfere with property not liable to be taxed—but the property liable to be taxed, real and personal, shall be taxed equally. That is all there in the proposition, excepting that the Legislature shall pass laws, requiring persons to estimate the full value of the property in their possession, or which they own, under oath. There is no legislation about it. It is a simple announcement of a principle, just, fair and liberal to all parties. It is no advantage over the personal property—no escape of the real estate—but it simply declares that the owners of land shall stand in no worse position, than the owners of personal property in the State of New York; and I ask every gentleman on this floor, to say, whether the principle is not fair and honest; if there can be any reason given in the world why a poor man—a man in debt, in possession of a farm, choosing that as the capital stock out of which he is to make a living, should pay taxes on the full amount of it, while the man engaged in trade and traffic, with the whole amount of his personal property in goods and merchandise, should entirely escape taxation?

Mr. McDONALD—I wish to ask the gentleman one question.

Mr. RATHBUN—I do not like to be interrupted.

Mr. McDONALD—I simply wish to ask how we shall account for debts.

The PRESIDENT—The gentleman from Cayuga [Mr. Rathbun] does not yield the floor.

Mr. RATHBUN—The gentleman wants to ask me how we shall account for debts. I do not want the word "debts" in the Constitution. I want the property taxed. If I have ten thousand dollars' worth of personal property in my hands,

and I owe for it, and my neighbor has a farm worth ten thousand dollars and he owes for it, I want to have the gentleman tell me why I shall not pay taxes as well as he? What reason is there why I should be excused and he compelled to pay? It costs more to protect my property than his, and yet the principle of exemption lets me go free. My property makes money for me, while he pays my taxes. It is unjust; it has always been unjust, and it always will be unjust, unless this Convention takes hold of that question and settles the fair and honest principle that taxation shall be equal. That is all I desire, and I hope the Convention desires the same thing and will decide that it shall be so.

Mr. S. TOWNSEND—I am surprised, when, as the gentleman from Ontario [Mr. McDonald] has shown that the manner in which our present laws are framed with reference to taxation invites and produces perjury throughout the State at large, that there should be so much restlessness exhibited on the part of this body while so great a moral question is under discussion. Certainly, in framing a new Constitution, it is our duty thoroughly to investigate this question. For twenty years the Legislature of the State has been occupied upon the matter, but has not yet succeeded in arriving at any satisfactory conclusion. But that fact should not deter us from making still further efforts. We all know that the very best improvements and best ideas of the day were in their incipency thought little of, ridiculed and scorned. I do not believe that the Convention can better occupy its time than in the endeavor to remedy that evil. Here we have one hundred and sixty gentlemen, who theoretically are, or ought to be, the *creme de la creme* of the State in their respective districts, who ought to be a hundred and sixty of the highest mind and of the highest integrity in our State. If we may hope ever to reach any good result upon this question of taxation, it should be from the deliberations of a body of this kind. I am opposed to the amendment of the gentleman from Ontario [Mr. McDonald], and I thought the proposition was voted down so decidedly in committee that it would not be offered again—the proposition to require a man to say how much he owes, at the instigation of a tax collector or tax assessor. That is a very difficult point to be stated by any man, whether in a limited or an extensive business. The theory is that all laws must be exactly carried out. Now, take the case of a member of this Convention going home on Saturday, who is interrogated by the tax assessor: "I have been waiting to see you, but you have been engaged in the Convention, and I have had no opportunity; you have got so much property; now, how much do you owe?" He could not give a statement that he could swear to as being perfectly correct, without calculating how many days each of his farm or laboring hands have been employed; how many days he had been away, and a variety of other facts difficult to state. I only speak of this case to show how ridiculous it is to base taxation upon such a principle as that. Perhaps a county board of assessors might assist an honest tax payer to do it; but I think even they would be puzzled. It is our desire that the thirteen millions of State taxation

shall be fairly imposed upon the several counties, and how that shall be done is a very grave and very important question for our deliberation. I regret that the gentleman from New York [Mr. Opdyke] has not been in his seat for a day or two, because I think he has given the subject, previous to our meeting, some advantageous investigation, and it would be useful to us if he would give us, to a greater extent than he did the other day, the results of these investigations. I understood him to corroborate an idea entertained by myself, that we should find the parallel of property and population running so closely together that the State taxation might be levied in proportion to population, as the best rule for reaching a fair equation of it. We all know that if any one idea brought this nation into existence, it was this: that representation and taxation should go together. You will remember the epigram of a sarcastic Frenchman, who, in the time of our "nullification" difficulties in 1831, said that the history of this government would be written thus: "That it came into existence by a duty on tea and went out of it by a duty on broadcloth." So much for this idea of taxation; for equality of taxation and of representation should be cardinal principles of our government, and should be the theory we should incorporate here. The county of New York, which pays four or five millions out of the thirteen millions of the State taxes, should be represented in proportion, in order that it should have its due weight with reference to a matter like this. Gentlemen are continually alluding to the cities of New York and Brooklyn and other cities, especially with reference to their business operations. They should know that whatever concerns the prosperity of New York, concerns the prosperity of the country in various ways; and the capital invested all over our State is identified in interest with the operations of that magnificent city. I dislike, therefore, to hear these special and invidious allusions to New York. Every thing which tends to advance that city extends a beneficial influence over every county in the State. To see that, to a large extent, the personal property in the State is exempted from taxation, gentlemen need not look any further than to the Convention Manual, vol. 2, which is before them. I will refer them to pages 71-5, where they will find stated at the bottom of the page the progressive increase of the assessed value of the personal property of this State, commencing at \$119,000,000 only in 1846. If they choose further to look at the debates in 1846, they will find that this matter was entered into by one of the delegates to that Convention, in reference to the taxation of personal property. We commenced, in 1846, with only one hundred and nineteen millions, and end with \$334,800,000, which, as I like round numbers, I will call \$335,000,000, for the year last past. That is the amount upon which assessments are levied, as presenting the entire personal property of the State. I remember that it was stated in 1846 that \$119,000,000 did not represent the banking capital alone, showing the entire exemption of all other property. The \$335,000,000 for last year does not represent the banks and insurances—certainly not the banks, insurances, and railroad

capital alone—I am safe to say that. Therefore, much of the capital of those incorporations and associations which go before the Legislature and cause so much corrupt legislation, is exempt from taxation. If the resolution offered by the gentleman from Albany [Mr. Harris], shall ever be answered, we shall be told that the court of appeals is engaged much of its time on the business of corporations. These "metaphysical bodies," as Hamilton once called them, are very expensive bodies to this State; but I desire nothing more than that their capital shall be subject to taxation. I think the railroads, plank-roads, turnpike roads, banks, insurance companies, trust companies, ought all to be brought within the purview of the State board of assessors which we have established, and which I may say perhaps that I had something to do with creating. If these were all brought within the purview of the board of equalization, we should have a gain in them alone, equal to the amount of personal property at present taxed in our State. I have not alluded to manufacturing corporations, which since 1811 under general laws and special laws have existed to a great extent in this State, whose capital embraces many millions, perhaps hundreds of millions of dollars. Nor have I spoken of the special partnership capitals, which, perhaps in the city of New York alone (I speak at haphazard; for although I intended to investigate these amounts during the interregnum of our Convention, I have not been able to do so), amount to at least \$50,000,000. How utterly preposterous then it is that we should have a return of \$335,000,000 presented as a fair return of all the personal property in the State. My honest belief is that there is truth in this fact, lamentable as it is, suggested by the gentleman from Ontario [Mr. McDonald], that we all more or less give countenance to evasion in the return of our personal property. And in view of this, I have for many years believed it would be for the best interests of the State to drop the idea of the assessment of all personal property, at least for State purposes, except such as is represented by declared, incorporated or associated capitals, including in that their indebtedness as that represents capital. I have no idea that the railroad corporations have upon the tax books the amount of \$10,000,000; and we know they are worth \$200,000,000 certainly. Perhaps their capital amounts to sixty or seventy millions; but a portion of their indebtedness, for all practical purposes, is capital and should be represented. I think if the Convention should entertain the proposition, directing the Legislature to assess the State taxation upon real estate and associated and incorporated capital characterized as I have named, all the good we can achieve would arise therefrom; and this would leave the personal property of the State to be investigated and scrutinized. If at all, under that espionage which the local assessors if they choose, can undertake, if they desire that larger field in the counties and localities to form the basis of tax assessments. The gentleman from Schuylers [Mr. Magee] made a proposition in committee to assess a

certain percentage upon these declared capitals, not beyond three per cent; and I think he will regret that he is not here to-day to take part in this debate. I hope it will not be hurried, but that those who have thought more upon the subject will further extend the debate. In rising to state these views, I will say, that I am not entirely fixed in regard to them, but I am subject to the influence of parliamentary debate. I do not come here pledged to one idea or to another idea; but I shall most certainly relinquish my own whenever any gentleman will produce sufficient reasons for my doing so. I have an amendment to offer; but, as it is not now in order, I read it as a part of my remarks. I propose to offer at the proper time the following section:

"The personal property in this State represented by the capital of all incorporated or associated rail, plank and turnpike roads, banks, trust and manufacturing companies, limited partnerships and other business corporations or associations, with full or partial corporate powers, including also such indebtedness of such corporations or associations as virtually represents capital, shall be liable to taxation for general State purposes. All other personal property shall be exempt from any such taxation."

Mr. M. I. TOWNSEND—I am in favor of the proposition of the gentleman from Ontario [Mr. McDonald], not because—

Mr. BARKER—Will the gentleman from Reusseler [Mr. M. I. Townsend] give way one moment? Since the motion was taken this morning, and it was voted that this Convention adjourn until Friday morning at ten o'clock, I have been in consultation with many members who voted with me that that be the hour to which this Convention stand adjourned, and it is quite apparent that there can be no quorum on that or any other day this week; and in view of that I hope the members who voted with me this morning for an adjournment to that day will consent that this Convention stand adjourned from twelve o'clock to-day until Monday evening at seven o'clock, and with the view of testing the sense of this Convention at this moment, I make that motion.

The PRESIDENT *pro tem*.—If there is no objection that motion will be entertained.

Objection being made, the motion was not entertained.

Mr. ALVORD—I trust that gentlemen will not object, because it is evident that there will be no quorum. The President of the Convention has left, and other members have indicated their determination to be absent, and we shall be left without a quorum—without any sort of question; and therefore we must yield to the necessities of the case and go over, in my opinion.

Mr. M. I. TOWNSEND—I will not stand in the way of a motion for the adjournment of the Convention at twelve o'clock, when that time comes. I commenced by stating that I was in favor of the proposition of the gentleman from Ontario [Mr. McDonald] mainly for the reason that it compels the rendition of a sworn statement of personal property to the public assessor. It is so perfectly apparent that no two gentlemen can differ upon that subject, that we never shall have

a proper assessment of property in the State of New York until the assessors of the State shall come to know what personal property is to be assessed. Now, gentlemen may take any view of this matter in their conversation and in their arguments that they please; no gentleman fails to know that the assessor cannot assess personal property that he is ignorant of the existence of; and every body knows in addition to that, that it is impossible to be informed of the existence of personal property owned by any man except by information obtained from the man himself. If we wish the personal property of this State to be brought upon the assessor's list, and to bear its share of the public burdens, we shall be compelled to take measures to bring the knowledge of the existence of that property to the assessors. As I was not in the house when the discussion commenced this morning, I was not aware that the proposition of the gentleman from Chautauqua [Mr. A. F. Allen] was now under consideration. That proposition, as I now understand, contains the same provisions. I am prepared to vote for almost any form of constitutional enactment that shall remedy somewhat the injustice under which the people of this State have been suffering during all time and an injustice that is increasing from year to year. I sympathize with my friend from Clinton [Mr. Beckwith], and I am happy to see that he is still in his seat. My friend from Clinton deems that the rendering of these lists will be an intolerable hardship. Why, sir, it will be no hardship to the man who has no personal property to render a list of. It will be no hardship for a man who has very little personal property, to render a list of the property that he has. It will only be a hardship to the man who has immense possessions; and my friend from Clinton [Mr. Beckwith] will remember a young man mentioned in the gospel who had a constitutional provision or fiat directed to him, to sell all he had and give to the poor; and who was exceeding sorrowful because he had great possessions; and that is all the difficulty with my friend from Clinton. He sees, in looking at the list, that he shall have to return these great possessions, and therefore in view of a proposition of this kind my friend from Clinton is exceedingly sorrowful. The difficulty, therefore, is not that this is not right. The difficulty is not that we have not the power to do it. The difficulty is not that we ought not to do it: the difficulty is that some of us and most of us have great possessions. Now if we have great possessions, let us do the will of our great master the people and our great master above, and let those possessions be brought upon the tax list, and let them bear their proportion of the public burden. We hear a great deal in this Convention about "legislative corruption" and "official corruption." What is legislative corruption? What is official corruption? It is the voting and acting of a public officer in such a way, as to promote his own interests regardless of his duty, and regardless of the public good. If my vote in this Convention shall be governed in giving it, in one direction or in another with a view to the effect it will produce upon my interest, if this constitutional provision shall be adopted, I shall feel myself

as guilty as if I sat in the legislative hall and received directly a bribe. We ought to legislate in such wise as to promote the best interests of the State; and can a man doubt that it is for the best interests of the State that all the \$5,100,000,000 of property in this State should bear its share in the public burden, and not leave the whole public burden upon \$1,600,000,000? "\$5,000,000,000." I say, because other gentlemen have so estimated it; but that is no measure of the public wealth of this State. It is no measure of the wealth that ought to be brought upon the tax-list, and is not brought upon the tax-list. I commend it to those gentlemen who live in the country portion of this State, to inquire how much addition would be made to the taxable property of the State if proper taxation were extended to the great cities—if the men that now possess from two to three or four hundred thousand dollars, and are taxed for twenty-five thousand, were taxed to the full amount of their property? And how shall they pay taxes unless they tell what their property is? Gentlemen may say that the owners of real estate need not make sworn returns, yet sworn returns from the owners of real estate would correct the evils which the gentleman from Ontario [Mr. McDonald] speaks of. My friend from Queens [Mr. S. Townsend] will not doubt that my friend from Ontario [Mr. McDonald] told the truth when he said that the rolls of the assessors in this State speak practically sworn lies. There is not, probably, throughout the State an assessment roll that is not black with perjury. And we create the necessity for it. The men that are at the head of affairs, who sanction the present system, substantially sustain it, because, under the present state of things, if the town assessors put on their lists the true value of the property owned by the men who own real estate, they know that they are adding robbery to robbery. They are robbing these men that own real estate still worse than they are robbed by the mode of enforcing the law that is now adopted in the State. Correct your law, and there will be no occasion for the assessors to underrate the value of real estate; yet they will do it as long as the law stands as it now is. The assessor sits down and sees these wealthy citizens, wealthy in personal property, paying no taxes at all, and he understands perfectly that it is a race in which the assessors of the respective towns and the counties of this State, are struggling to see who shall make the tax lists the lowest. When the board of supervisors comes together, combinations are entered into to take from one town and put upon another, with very little reference as to the propriety of so doing, because the burden of taxation rests so heavily upon those who are taxed at all, that men feel that any resort almost is justifiable that will shift the burden from the shoulders of those upon whom it rests. It was objected, when this session was before the Committee of the Whole, that this was legislation. If the members of this Convention were willing to act throughout upon the principle that they will keep their hands from mere legislation, I should listen to the cry with a great degree of deference. But I find that the members of this

Convention are ready and willing to legislate when legislation jumps with their humor, and unwilling to legislate when legislation seems to cross the track of their humor. We have legislated as much in other respects as it is proposed to legislate in regard to this, and I hope that we shall put a provision in this Constitution, such as will require the owners of property to tell the assessors what property they possess. I am free to say, that I am very hopeful of the work that we shall accomplish here; but I can hardly conceive of a Constitution, however variant to my notions of wisdom, that I would not enthusiastically sustain if I felt that there was some relief from the injustice and burden of taxation as it is now practiced in the State of New York.

Mr. BALLARD—I will renew the motion of Mr. Barker, and I hope there will be unanimous consent to its being entertained.

Objection was offered.

Mr. McDONALD—I withdraw my proposed substitute with the intention of concentrating all who are in favor of equal taxation upon the motion of the gentleman from Chautauqua [Mr. Allen], and I will then offer the provisions with regard to exemption, and deductions for debt separately.

Mr. A. F. ALLEN withdrew the amendment proposed by him and offered the following:

"Taxation upon the real estate and personal property in this State shall be equal and uniform upon all such property not exempt by law, and the Legislature shall require from every person in this State a sworn statement of the taxable property, and actual value thereof, both real and personal, owned by, in the possession of, or under the control of such person."

Mr. S. TOWNSEND offered the following as a substitute:

"The personal property in this State, represented by the capital of all incorporated, or associated rail, plank and turnpike roads, banks, trust and manufacturing companies, limited partnership, and all other business corporations or associations, with full or partial corporate powers, including also such indebtedness of such corporations or associations as virtually represent capital, shall be liable to taxation for general State purposes. All other personal property shall be exempt from any such taxation."

Mr. S. TOWNSEND—In order to show, as far as I am able to gather the facts, how unequal taxation bears now on various counties, I would say that under the present system the county of Columbia pays \$23,000 more than she would under an equitable system; Dutchess, \$35,000; Genesee, \$10,000; Kings, \$9,000; Livingston, \$1,000; New York, \$1,759,000; Ontario, \$5,000; Orange \$1,000; Westchester, \$25,000; Yates, \$2,000, while about ten counties would not be affected seriously.

Mr. BALLARD—I move, for the purpose of introducing a motion changing the hour of adjournment, to lay the special order on the table.

Mr. KINNEY—I rise to a point of order—that

one objection will prevent the laying of a special order on the table, and I object.

The PRESIDENT *pro tem*—The Chair is of the opinion that it is in the power of the Convention to lay any thing on the table that is before it.

The question was then put upon the motion of Mr. Ballard to lay the special order on the table, and, on a division, it was declared carried, ayes 50, noes not counted.

Mr. KINNEY—I rise to a point of order, that no quorum voted.

The PRESIDENT *pro tem*—The Chair sustains the point of order. All opposed to the proposition will now vote.

Thirty-three delegates voted in the negative, making a quorum, and the motion was again declared carried.

Mr. BARKER—I move that when this Convention adjourn, it adjourn to-day at twelve o'clock until Monday evening at seven o'clock.

Mr. GRAVES—I desire to inquire of the gentleman from Columbia [Mr. Gould], who has this subject in charge, whether, on examination, it is ascertained that a quorum cannot be had here Friday and Saturday?

Mr. GOULD—It is ascertained that a quorum cannot be had.

The PRESIDENT *pro tem*, stated the question to be on the motion of Mr. Barker.

Mr. KINNEY—On that I call for the ayes and noes.

A sufficient number not seconding the call, the ayes and noes were not ordered.

The question was then put on the motion of Mr. Barker, and it was found, on a division, that no quorum voted, there being 48 ayes and 31 noes.

Mr. M. I. TOWNSEND called for the ayes and noes.

A sufficient number not seconding the call; the ayes and noes were not ordered.

The question was again put on the motion of Mr. Barker, and it was declared carried by a vote of 52 to 29.

Mr. C. L. ALLEN challenged the count, but immediately withdrew the challenge.

Mr. DUGANNE—I call from the table the resolution I submitted this morning. It is in possession of the Clerk.

The PRESIDENT *pro tem*—The Chair is of opinion that we must take up the order of business as it is prescribed by the rule. Next in order is the presentation of memorials.

Mr. CHURCH—I would suggest whether or not the motion on the table for the purpose of taking up a given resolution does not require the resumption of the order of business?

The PRESIDENT *pro tem*—The gentleman is under.

Mr. M. I. TOWNSEND—I move that the Convention do now adjourn.

A DELEGATE—I would like to know to what time the adjournment will carry if we adjourn?

The PRESIDENT *pro tem*—It will carry until Monday evening.

The question was then put upon the motion of Mr. M. I. Townsend, and, on a division, it was declared carried by a vote of 38 to 26.

So the Convention adjourned.

MONDAY, December, 2, 1867.

The Convention met at seven o'clock, pursuant to adjournment, the PRESIDENT *pro tem.*, Mr. ALVORD, in the chair.

Prayer was offered by the Rev. EDWARD BAYARD.

The Journal of Wednesday, November 27, was read by the SECRETARY, and approved.

Mr. GOULD—I ask leave of absence for Mr. Sheldon, of Dutchess, for to-morrow.

No objection being made, leave was granted.

Mr. GOULD—I also ask leave of absence for Mr. Stratton of New York.

No objection being made, leave was granted.

Mr. SPENCER presented a petition from the citizens of the town of Rathbun, praying for the abolition of the Board of Regents of the University.

Which was referred to the Committee of the Whole.

Mr. GOULD presented a similar petition from the inhabitants of the county of Columbia.

Which took a like reference.

Mr. MERWIN presented a similar petition from A. B. Clark, and others.

Which took a like reference.

Mr. MILLER presented a similar petition from several citizens of the town of Hampden, Delaware county.

Which took a like reference.

The PRESIDENT *pro tem.*—The Chair would inform the gentlemen of the Convention that under a resolution passed some days since, to-day being the 2d of December, all reports of standing committees not now made cannot be made hereafter unless by vote of the Convention. Reports of standing committees are now in order.

Mr. SPENCER presented a report from the Committee on the Preamble and Bill of Rights.

The SECRETARY read the report as follows:
To the Convention:

The undersigned, from the Committee on the Preamble and Bill of Rights, in obedience to the instructions of the Convention, contained in a resolution adopted on the 21st of November, 1867, report the following proposed Preamble and Bill of Rights, as a part of the Constitution framed by the Convention, and to be recommended to the people for ratification.

GEO. T. SPENCER.
J. HARDENBURGH.

We, the people of the State of New York, grateful to Almighty God for our freedom, in order to secure his blessings, do establish this Constitution.

ARTICLE I.

SECTION 1. No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof unless by the law of the land or the judgment of his peers.

§ 2. The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever, but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.

§ 3. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed in

this State to all mankind, and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State.

§ 4. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require its suspension.

§ 5. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

§ 6. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service; and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace; and in cases of petit larceny, under the regulations of the Legislature), unless on presentment or indictment of a grand jury. And in any trial in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense, nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation.

§ 7. When private property shall be taken for any public use the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by not less than three commissioners, appointed by a court of record, as shall be prescribed by law.

§ 8. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right, and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the facts.

§ 9. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

§ 10. No law shall be passed abridging the right of the people peaceably to assemble and petition the government, or any department thereof.

§ 11. The people of this State, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail from a defect of heirs shall revert or escheat to the people.

§ 12. All feudal tenures of every description,

with all their incidents, are declared to be abolished, saving, however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

§ 13. All lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

§ 14. No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

§ 15. All finea, quarter sales, or other like restraints upon alienation reserved in any grant of land, hereafter to be made, shall be void.

§ 16. Such parts of the common law, and of the acts of the Legislature of the colony of New York, as together did form the law of the said colony on the 19th day of April, 1775, and the resolutions of the Congress of the said colony and of the Convention of the State of New York in force on the 20th day of April, 1777, which have not since expired, or been repealed or altered, and such acts of the Legislature of this State as are now in force, shall be and continue the law of this State, subject to such alterations as the Legislature shall make concerning the same. But all such parts of the common law, and such of the said acts or parts thereof as are repugnant to this Constitution, are hereby abrogated.

§ 17. All grants of land within this State, made by the king of Great Britain or persons acting under his authority, after the 14th day of October, 1775, shall be null and void; but nothing contained in this Constitution shall affect grants of land within this State, made by the authority of the said king or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this State, or by persons acting under its authority; or shall impair the obligation of any debts contracted by this State, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

Which was referred to the Committee of the Whole and ordered to be printed.

Mr. ROY, from the Committee on Adulterated Liquors, presented the following report:

The SECRETARY proceeded to read the report as follows:

The undersigned, members of the Committee on Adulterated and Intoxicating Liquors, beg leave to recommend to the Convention the adoption of the following:

ARTICLE—

The Legislature shall not pass any law prohibiting the manufacture or sale of distilled or fermented liquors, or wines, but may regulate the sale thereof by general laws having a uniform operation throughout the State, and all existing laws inconsistent herewith shall be void.

J. A. VERPLANCK,
WALTER L. LIVINGSTON,
JAMES ROY,
ROBERT COCHRAN.

Dated ALBANY, November, 1867.

Which was referred to the Committee of the Whole, and ordered to be printed.

Mr. GRAVES—I desire, on the part of the Committee on the Sale of Adulterated Liquors, to make the following report:

The undersigned, two of the Committee upon the Adulteration and Sale of Strong and Spirituous Liquors, report in favor of incorporating in the Constitution the following provision:

The Legislature may pass laws prohibiting the sale of strong and spirituous liquors.

EZRA GRAVES,
S. D. HAND.

November 26, 1867.

We think a prohibitory law now would hurt rather than help the cause of temperance. It would not be generally enforced, and liquor would be sold in many places without any restraint. If total abstinence shall ever become the steady, and not fitful wish of a majority of the people, we see no reason why they should not enforce it by law. A constitutional provision may be unnecessary to confer power upon the Legislature to enact a prohibitory law; to remove the doubt upon the question we concur in recommending the above section.

J. S. LANDON,
L. D. ELY.

The undersigned, in submitting this report, feel somewhat embarrassed in consequence of the multiplied communications received, expressing so many opinions upon the question of prohibition, upon the question of license, or the unrestricted sale of intoxicating liquors. They come from the friends of temperance, from the lovers of good order, from the moralist and Christian, and from interested dealers, all having in view the best interests of society and the best mode of contributing to the progress and success of our government; protecting its citizens against immorality and crime without depriving them of their personal rights and privileges. We cannot look with indifference upon the efforts which have been made to bring before this Convention a concentrated public judgment upon the effects of the traffic in intoxicating drinks; also to establish the opinion that an unrestricted sale of both malt and spirituous liquors should be tolerated as a right in a government having its foundation in equal rights to all, and also to impress upon the committee the fact that malt liquors are harmless in their properties, and can with safety and propriety be established as a national beverage. We can but regard these opinions as coming from earnest heads and honest hearts, although they differ widely in the means to be used to obtain the end.

We have been compelled from the character of the petitioners, and the great magnitude of the question involved, to give careful attention and full weight to the many reasons which have been offered to establish these divided opinions, and while we think that many of these memorialists have failed to prove the correctness of their opinions, yet we see no want of sincerity in the manner in which they have urged their claims, each asking the adoption of their peculiar views as the basis upon which the superstructure of temperance and good order should be established; and each giving his experience as a test

of the soundness of his argument. The advocates of temperance reform are not a unit upon the best mode to accomplish their object. Perhaps we should regard their dissimilar opinions as an earnest of their determination to suppress the evils of intemperance by all the means which well directed human kindness, determination and philanthropy can bring to bear on so great an evil. These appeals made to this Convention have not emanated from any particular political party, or exclusively from any religious party. They bear the signatures of male and female advocates from the highest and most honorable position in society to the humblest philanthropist and the most devout Christian. They are fresh from the altars of divine worship, from regenerated sinks of sin, from halls of science, and from embryo temples of charity and humanity, all aiming to suppress the admitted evil.

Your committee have been attended, through the courtesy of this house, by an eminent chemist from the city of New York, from whom we learn that all liquors, both malt and distilled, including wines, were susceptible of adulteration by the most poisonous of drugs, which, in the hands of a scientific, conscientious adulterator might be so well diffused among the liquors adulterated that its poisonous effects would produce comparatively but little injury, while in the hands of the ignorant, selfish, inhuman speculator or vender would inevitably add instrumentalities of death from which the unfortunate inebriate could not escape. It appears to your committee, from the examination of this scientific witness, called for that purpose, that the practice of adulterating is almost universal in the city of New York, and also in the country. And that the practice is not confined to this country, but prevails in foreign countries, from which our choice liquors and wines are said to be imported, and that it is now the exception to obtain pure liquors from any foreign countries. It appears that brandies, bearing the appearance of the genuine, are now made from whisky, with poisonous ingredients, so near like the original in its flavor that the most experienced are unable to detect the adulteration. We are thus particular in stating some of the evidence before us, that the public may be apprised of the imposition so generally practiced on the community, which fraud is not limited to cognac brandy and port wine, but that all spirituous liquors and wines are alike adulterated, differing in the ingredients used so as to make the article offered for sale meet the public taste, pander to the corrupted appetite, and thereby render more brief the inebriate's debauchery.

Your committee fully appreciate the heartfelt zeal manifested in this cause, but regret that there should be a division of sentiment upon a question so amply affecting not only the citizens of the State of New York, but also the great family of man, whether separated by national customs or governmental boundaries.

We cannot look forward with flattering hopes of success in the attempt to suppress this great evil until the great army of progress and humanity shall advance in one line, regulated by one system of tactics—with one uniform range of artillery,

and thus meet the enemy in open and manly conflict, face to face.

Nothing short of educating the public mind to fully estimate the sad consequences of adulteration and sale of this common enemy of man which sends over fifty thousand of our brothers and sisters annually to drunkards' graves, will awake public justice from its slumbers and vindicate laws which humanity may suggest.

In the opinion of the undersigned, laws enacted in advance of public opinion are worse than dead letters; they countenance disrespect for laws, the observance of which are absolutely necessary for the security of life and property. All successful laws are the public mind; all salutary enactments are the popular will; all attempted restraints are but cobwebs against the throbbing impulses of the American heart.

By this report we remove all legal objections which have awakened distrust, abridged effort and silenced the argument of "want of jurisdiction," behind which are too often found the violators of good order and morality. When public opinion shall measure this soul and body destroying sea of intemperance; when kind words, gentle hands and persuasive arguments shall have lost their efficacy and power in restoring and controlling the perverted and unnatural appetite of the unfortunate inebriate; when petitions, entreaties and prayers shall fail to restrain the unhallowed sale of adulterated, strong and spirituous liquors; when the public judgment shall demand coercive and compulsory power against drunkenness; when moral and legal power shall meet on a common platform, and unitedly grapple in with the monster which has thus far maintained his power against the single-handed efforts of each; then this provision in the Constitution will afford the people the unquestioned right to demand of the legislative power a guaranty against the continuance of an evil which appetite and interest have so long successfully defended. This is only manifest justice to a large and worthy class of citizens, who have and are now struggling early, late and long, to make the world better, by ridding it of many of its unnecessary evils, of which intemperance is not the least. This power, in the hands of the Legislature, can only be exercised when the people shall direct, by such an expression of popular will as shall leave no doubt of the duty of the servant; that popular will suggests the law and demands its enforcement. It is the people who will then act, and the people are the government to which every good citizen will yield a pleasant obedience.

EZRA GRAVES.

November 26, 1867.

The report was referred to the Committee of the Whole, and ordered to be printed.

Mr. WALES—The Committee on Industrial Interests have made two reports. Those reports were by the vote of the Convention, I think, referred to the Committee on the Bill of Rights—rather an unusual course, I think, for reports of standing committees. I see nothing in the report made by the Committee on the Bill of Rights with regard to the subjects of those two reports.

The PRESIDENT *pro tem.*—What motion does the gentleman make?

Mr. WALES—I move that the Committee on the Bill of Rights be instructed to return those reports to this Convention, that they may be considered.

Mr. SPENCER—The papers relating to that subject I believe are in the hands of the chairman of the committee [Mr. Kvarts], who is not now present, and who has not been present since the adjournment in September.

Mr. WALES—I have no objection to the matter being deferred, and I will withdraw my motion.

Mr. SILVESTER—The chairman of the Committee on Indian Affairs is not present this evening. The report of the committee is drawn and ready for presentation, but the report and papers are all in the possession of the chairman. Under these circumstances I would ask that the time for the presentation of that report be extended until Wednesday, when I think he will be present.

There being no objection, leave was granted.

Mr. M. I. TOWNSEND—I have the honor to be upon the committee on the subject of official corruption, and I am in doubt whether it is a standing or a special committee. I suppose it to be a special committee.

The PRESIDENT *pro tem.*—It is a special committee, but the resolution says that all committees both standing and special shall report on the third day of December.

Mr. BELL—Not being present at the time, I was not aware of the stringency of this rule, and will ask the indulgence of the Convention for the Committee on the Salt Springs of the State, that they may be permitted to report any time during the present week. The reasons are that the report has been written since the recess in September, but the committee have not been able to examine the report, and have not had a meeting on the subject; and other parties have informed the chairman of the committee that they desire to examine the report and to give such information as their experience and familiarity with the subject will enable them to do. I, therefore, ask the indulgence of the Convention, that the report may be submitted any time during the present week.

There being no objection, leave was granted.

Mr. WALES—The chairman of the Committee on Industrial Interests [Mr. Duganne] is not present. I understand there are some matters in his hands, but the members of the committee do not know that he has a report prepared. I therefore ask that he be permitted to report any time this week.

There being no objection, leave was granted.

Mr. OPDYKE—I have a report from the Committee on Official Corruption, which I have drawn in the form of a majority report, having the consent of Mr. Flagler, one of the members of the committee, to use his name, and supposing I should see Mr. Loew, another member of the committee, who approved of the article as originally drawn, the principles and substance of which have not been changed. Not having seen him, I have not been able to get his sanction, though I have no doubt I shall obtain it. If it is the pleasure of the Convention, I will present the report now, or I will postpone it.

The PRESIDENT *pro tem.*—Under the resolution the gentleman from New York [Mr. Opdyke], has the right to report.

Mr. OPDYKE—After that explanation I will present the report and with the consent of the Convention, I will read it. I will say in regard to the other two members of the committee, that one of them expressed his disapproval of a portion of the article. The other at my last interview with him, had not made up his mind.

Mr. OPDYKE then read the following report: The undersigned, a majority of the Special Committee appointed "to consider the practicability of suppressing official corruption by means of constitutional provisions," respectfully present the following article, together with a brief statement of their reasons for recommending its adoption:

ARTICLE —

SECTION 1. Any person holding office under or by virtue of the laws of this State, who, except in payment of his legal salary, fees or perquisites, receives or consents to receive, directly or indirectly, any thing whatever of value, or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or inaction is to be in some manner or degree influenced thereby, shall be deemed guilty of receiving a bribe, and, on conviction, shall be punished by imprisonment in a State prison for the term of three years and such further term as may be prescribed by law. Such convict shall not be pardoned or in any manner relieved from the full measure of his sentence, except upon satisfactory proof of his innocence.

§ 2. The person or persons giving such bribe, if the same shall be accepted, shall not be deemed guilty of a penal offense, nor liable to civil or criminal prosecution therefor. But any person who offers or promises such bribe, if the same shall be rejected by the official to whom it is tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony, and, on conviction, shall receive the same measure of punishment as is provided in this article for a person convicted of receiving a bribe.

§ 3. A person charged with receiving a bribe, or with offering or promising a bribe that is rejected, may be compelled to testify against himself in any civil or criminal prosecution therefor. He shall be liable to damages in a civil action by any party aggrieved, and the lapse of time shall not be a bar to any prosecution against him.

§ 4. Upon complaint, under oath, of any person to a judge of the supreme court, showing probable cause that a crime has been committed under the provisions of this article, or upon the application of a district attorney, the judge shall issue his warrant for the arrest of the person charged with the offense, and hold him for examination. If, upon such examination and the testimony of any witnesses that may be produced, the judge finds sufficient cause therefor, he shall commit the accused, and send the case before the first grand jury having authority to indict. But nothing in this section shall deprive other magistrates, having criminal jurisdiction, of the right to arrest and commit for bribery as in other cases.

§ 5. Upon such complaint being made to the district attorney of any county, it shall be his duty forthwith to procure from a judge of the supreme court a warrant for the arrest of the person complained of; to summon all witnesses whose names may be furnished him, and to faithfully prosecute the examination. If the court shall commit the accused and send the case to the grand jury, it shall be the duty of the district attorney to summon the witnesses and to bring the merits of the accusation fairly before the grand jury; and, if an indictment be found, to bring the case without unnecessary delay before a competent court for trial, conviction and sentence.

§ 6. Any judge of the supreme court, or any district attorney who shall fail to perform with fidelity, any duty required of him by the provisions of this article, or who shall be in any manner derelict in the performance of such duty, may be removed from office by the Governor, but only after due notice and an opportunity of being heard in defense, and for causes to be assigned in the order of removal; he shall also be deemed guilty of a misdemeanor, and, on conviction, be punished by such fine or imprisonment, or both, as may be prescribed by law.

EXPLANATIONS.

In preparing the foregoing article the committee have been guided by the conviction that official corruption is a crime of deep turpitude, of growing prevalence, and of dangerous tendency; that the public welfare demands the adoption of more effective safeguards against its commission than are to be found in our present laws, or that can be hoped for from popular or legislative action. They believe that the needed remedy may be best attained by Constitutional provisions so framed as to increase the facilities of detection and conviction, and to insure the certainty of punishment. The article they present is designed to secure these ends. The first section defines bribery, and prescribes the punishment of public officers convicted of that crime. It was deemed best to place this definition in the organic law, and to make it comprehensive, lest the Legislature should do it so imperfectly as to admit of its ready evasion by corrupt officials. The measure of punishment is less severe than existing laws prescribe, but it is accompanied with a prohibition of pardon or commutation of punishment, so that the sentence will carry with it the certain loss of civil and political rights. Even with this addition, the punishment may not be deemed commensurate with the magnitude of the crime, but in view of its increased certainty, the committee believe it will prove sufficient to deter incumbents of office from its commission.

The second section exempts the giver of a bribe from all legal penalties. Experience proves the absolute necessity of exempting from punishment one of the parties to an act of bribery, if we would convict either. Our present statutes hold both equally guilty and liable to the same penalties; and our Constitution declares that no person shall be compelled, in any criminal case, to be a witness against himself. We have thus sealed the lips of the only witness cognizant of the fact

that bribery has been committed, for no one of ordinary understanding will voluntarily testify in crimination of himself. This renders it difficult, if not impossible, to obtain proof sufficiently clear and reliable to convict of that crime, and the consequence is that its perpetrators go "unwhipped of justice." It is notorious that neither the givers of bribes nor those who receive them are now punished. Our present laws afford perfect immunity to both. No one can doubt that it would be better to exempt a part than the whole, especially in view of the fact that it would be an effective means of suppressing the crime altogether.

The committee are aware that both the parties concerned in an act of bribery are guilty of a flagrant wrong, but they hold that the giver of the bribe is the less guilty of the two, and that the State may properly exempt him from punishment for the sake of suppressing the evil through the conviction and punishment of the more guilty public officer who receives the bribe. They regard this as the only ground on which his exemption can be justified, and yet they feel that in most cases of bribery his criminality is far less than that of the corrupt official. It sometimes happens that incumbents of office will not, without a private fee, perform an act demanded alike by their official duty and the public good. In such cases, public spirited citizens, without any private interest in the matter, may be prompted to give the fees demanded for the sake of promoting the public welfare. In doing this they commit bribery, but they can scarcely be regarded as guilty of crime; or, if the act be criminal, it has but a small share of the turpitude of that committed by the recipient. Again, it often occurs that measures beneficial both to the public and to individual interests, and in all respects unobjectionable, can be obtained from proper officials only by corrupt purchase. This, again, is bribery, but no one will maintain that in such cases the criminality of the giver approaches that of the receivers. But if we take the worst cases of bribery—cases in which money is paid to officials for the purpose of inducing them to commit a wrongful act, injurious to the public, for the exclusive benefit of the briber—we find that, even in such extreme cases, the official must be the more guilty of the two; because, in addition to his criminality as a participant in the act of bribery for the sake of illegitimate gain, he is also guilty of violating his official oath, and a sacred public trust confided to him by the people. The giver is guilty only of the crime of bribery, while the receiver is guilty of bribery, perjury, and a breach of a public trust, constituting together a crime against society which should be regarded as second only to treason in infamy. He perpetrates this threefold crime despite the protection afforded him in the dignity, the honor, and the enhanced self-respect incident to public station. Breaking through strong safeguards like these, of which the giver of a bribe is destitute, he manifests a proclivity to evil on the part of corrupt officials, which aggravates their guilt in receiving a bribe.

For these reasons it seems clear to the committee that the required exemptions of pun-

ishment should apply to the giver of a bribe as the less culpable party. But to the end that a moral offense as gross as that of corrupting public officers confessedly is, may not be prosecuted with impunity, they have provided that its unsuccessful attempts shall be punished with the same rigor as the act of receiving a bribe. This will leave the official upon whom the attempt is made, an independent witness of the fact, which will enable the prosecuting officer to furnish the proof necessary for conviction. It is believed that this provision will also have a salutary effect in deterring corrupt lobby agents from importuning members of a legislative body to vote for improper measures. It can scarcely fail to render that vocation both hazardous and unprofitable.

Least these means of securing convictions for bribery, and through them, the suppression of official corruption, may not prove altogether sufficient, the Committee have provided in section 3, that a person charged with receiving a bribe, or with offering a bribe that is rejected, may be compelled to testify against himself; thus withdrawing from him, the protection that the Constitution of the State and the common law now afford to all persons charged with crime. It is believed that the dangerous character of this growing evil, which threatens to destroy both public and private virtue, and to bring our institutions to merited reproach, fully warrants this innovation. It is but placing this class of offenders on a level with all persons charged with crime in continental Europe. It is there regarded as an effective agency in the detection of guilt, and in the vindication of innocence. There is no reason why it should not prove equally efficacious and salutary here, in trials for bribery. It is in fact, merely a step in approach to the principle on which we are assured Divine justice is administered.

The fourth and fifth sections of the article define the duties of judges of the supreme court, and district attorneys in cases where charges of bribery are made to them. It is the impression of many that our criminal authorities have not hitherto manifested sufficient vigilance and earnestness of effort in the prosecution of this class of criminal charges. These sections make their respective duties specific; and the sixth section provides that any want of fidelity in the performance of these duties shall render them guilty of a misdemeanor, and liable to be removed from office by the Governor.

Such in, brief, are the leading provisions and purposes of the article herewith submitted. In framing it, the committee have aimed at practical results. Their earnest desire has been to devise a plan that would effectually accomplish the object they were appointed to consider, the suppression of official corruption. They have aimed to secure that end, not by prescribing harsh or unusual punishment for such offenders, but by making their detection, conviction and punishment so certain, that it will deter incumbents of office from such crimes. They believe that in moral diseases, as in physical, prevention is better than cure; and they are firmly persuaded that the plan they propose, if adopted, will at least arrest the spread of

this moral leprosy, and they venture to hope that it will entirely eradicate it from the body politic.

In exercising the power to take testimony, conferred by the Convention the committee have examined but six persons, two of whom were in rebuttal. As they stated through their chairman, when asking for the power, their object was not to investigate charges against individuals suspected of official impurity, but to obtain some specific or general facts for the guidance of the Convention. The committee did not conceive it to be a part of the duty of this body to investigate charges of crime, but they felt that some information on this subject would be useful to it in framing safeguards against official impurity hereafter. They felt it to be their duty, however, to call before them Mr. H. B. Willson, who had addressed a letter to the Convention, making wholesale charges against the last Legislature, and declaring his ability to establish their truth, if called before the Convention. He was brought before the committee and examined at length, from which it appeared that he possessed but little direct specific knowledge on the subject; but he gave the names of other parties, who, he thought, would be able to testify to the facts that would establish the charges contained in his letter to the Convention. He testified, however, in substance, that Senator W. J. Humphrey had acknowledged to him that he had received from an agent of parties applying for an underground railroad franchise in the city of New York, five hundred dollars; but that he had given it to a friend, who had been unfortunate. Willson said this money had been given Senator Humphrey to secure his support of the railroad bill referred to, or an amendment thereto. That Senator, having heard of this testimony, came before the committee, and, after hearing it read, testified, that in substance, it was false; that he had opposed the bill, both in committee and on the floor of the Senate; and that he knew nothing of the amendment referred to by Willson. He brought with him Senator Low, chairman of the Senate committee, who also testified that Senator Humphrey uniformly opposed the bill referred to, both in committee and in the Senate. Willson also testified that certain members of Assembly, in some previous year, had taken considerations for their votes in cases which he designated. The committee subpoenaed some of the persons whose names were given them by Willson, as parties from whom they would be likely to get specific evidence of legislative corruption. The one he deemed most important was William R. Finch, of Coxsackie. He was summoned, but declined responding, on the ground of ill health, sending a certificate of inability from his physician. The committee also subpoenaed Mr. Edward R. Phelps, another of the parties referred to by Willson. He testified, in substance, that he had no specific facts, proving corruption, to impart, but that he was one of eighteen grantees, who, in connection with fifteen other persons, procured from the Legislature, in the year 1860, a grant for what is now known as the Central Park railroad of the city of New York; that after it was secured, the grantees and their fifteen outside associates formed themselves into an incorporated company, with a

capital of \$1,000,000, and awarded \$300,000 of their capital stock to themselves, without pay, as a compensation for the procurement of the franchise. This stock, he said, was widely distributed; that its market value had been ten per cent above par, and that he had good grounds for believing that a large share of the \$300,000 of stock thus distributed, went, ultimately, to members of the Legislature. He testified, also, that the application made to the last Legislature for an underground railroad in the city of New York, known as the Arcade plan, was regarded as meritorious, but failed to receive the sanction of the Legislature, as he believed, because the grantees refused to pay money for its passage.

The committee next examined Mr. William Richardson, president of the Dry Dock Railroad company. He testified, in substance, that that company expended, in the year 1866, in the procurement of legislation, about \$20,000. When asked if he disbursed any part of that money, he declined answering, on the ground that it might tend to criminate himself.

The committee next subpoenaed Mr. Parmelee, then in the State of Connecticut, who, as correspondent of the New York *Tribune*, had made grave charges of legislative corruption during the last session. He declined to respond on the ground that he was not within the jurisdiction of this Convention. They also subpoenaed Mr. Thurlow Weed, who has thus far failed to respond.

The only other person examined by the committee was Mr. Edwin B. Worcester, treasurer of the Central Railroad company. He testified, in substance, that that company paid out during the pendency of its application before the last Legislature for an increase of fare about \$205,000, which he inferred was used in various ways to influence legislation; that he, as treasurer, advanced the money without any specific authority, paying it mainly to the president of the road, or on his orders; that these advances have since received the sanction of the board of directors, but he is not aware that the advances have been charged to any specific account. He also testified that similar advances, amounting to \$60,000 or more, were made by that company during the year 1865 and 1866.

The committee have thus given a brief analysis of all the testimony taken by them that they deem of value to the Convention. They deduce from it the following general facts, which they think will aid the Convention in arriving at correct conclusions on the subject to which they relate.

1. That our present laws, which make the giver and the receiver of a bribe equally guilty, render it futile to attempt to convict either. Men cannot be expected, except on compulsion, to criminate themselves. No witness brought before the committee would acknowledge that he had committed the act of bribing an official. All either denied it or refused to answer, on the ground that it might tend to criminate themselves. Consequently, if we would convict for bribery, we must either exempt one of the parties or compel both to testify against themselves, or we must do both.

2. Finding it impossible to obtain proof of specific acts of bribery, the committee next sought general facts from which the specific acts might be fairly inferred. They found that one railroad company had expended in a single year, in efforts to procure favorable legislation, \$20,000; another upward of \$200,000, besides \$60,000 or more during the two preceding years; and that another had distributed \$300,000 of its own stock, valued at about par, a large portion of which was believed to have been paid ultimately to members of the Legislature. The inference is unavoidable, that much of these and other large sums, similarly expended, must have been employed, directly or indirectly, in corrupting members of the Legislature, because it is not conceivable that so much money could have been legitimately expended in the procurement of honest legislation.

3. That meritorious measures are sometimes defeated, because illegitimate compensation is refused.

Facts like these afford strong confirmation of the general but vague charges of official venality—charges which, it should seem, are vague only because the law stifles the proof. They also demonstrate the necessity of bold and decisive action on the part of this Convention, if it would crush this iniquity, and thereby entitle itself to the gratitude of the people.

The testimony taken by the committee, together with all papers referred to them, are herewith submitted; and the committee ask to be discharged from the further consideration of the subject referred to them.

GEORGE OPDYKE,
Chairman.

Which was referred to the Committee of the Whole and ordered to be printed.

Mr. M. I. TOWNSEND—I, as the President is well aware, am a member of the Committee on Official Corruption, yet the general ideas only of the report have heretofore come to my knowledge. I dissent from so much of that report as proposes to exempt from punishment a person who gives a bribe which is accepted. It has not been the policy of the State of New York to punish the seduced and let the seducer go free; and for myself, I cannot concur either in the justice or the propriety of adopting such a provision on the part of this Convention. If the fact be true, as was declared by one of the witnesses brought before the committee, that the Central Railroad, for the purpose of procuring a single measure, expended two hundred thousand dollars, I think that the Convention and the community will be well aware of the terror that would arise in this State if we should say that rich men, rich monopolies and rich interests, may use their funds at will for the purpose of bribery, without the fear of incurring punishment. For that reason I dissent from so much of the report as relates to that subject. I would not trouble the Convention with mere verbal objections had I seen the exact form of the report and been able to reduce my objections to writing before I made my report, as I am obliged to report to-night or not report at all. But, situated as I am, I will say that in regard to most of the other provisions recommended by the Committee, I

deem them unnecessary, for the reason that under the Constitution as it stands every thing proposed by the committee is provided for. The Legislature in 1853 enacted penalties quite as severe as those proposed by the committee, and have provided quite as fully for the obtaining of testimony. As the Constitution stands, there is no difficulty whatever in making a man testify as to any other person involved in the same offense as himself, if he be properly brought before the proper officer and called upon as a witness. The Legislature have provided that the testimony there given shall not be used in cases, either civil or criminal, against a person thus called upon to testify. There are further provisions in the majority report, making it the duty of a magistrate to receive complaints, and of district attorneys to prefer complaints, and a further provision that these officers may be removed for failing to do their duty. In these respects the committee have but repeated the law as it stands to-day. I have made a short report embodying my own views upon this subject, and concluding with proposing for the consideration of the Convention two sections, which I do not deem absolutely necessary to be adopted by the Convention as a part of the Constitution, but which may be, in my opinion, adopted wisely, if the Convention shall deem it desirable. I will read it.

Mr. M. I. TOWNSEND read the report as follows:

The undersigned, a member of the committee appointed to consider the practicability of suppressing official corruption by means of constitutional provision, respectfully reports:

That in the opinion of the undersigned it will not be practicable to suppress official corruption by means of any special constitutional provisions.

That under the provisions of the Constitution now existing, it has been found practicable to impose adequate penalties upon persons guilty of official corruption, and to compel persons cognizant of or implicated in offenses of this character to testify in relation to them. The legislation of 1853, which is conceded to have been sanctioned by the present Constitution, seems to have been sufficiently stringent. The reason why official corruption in our legislative and State officers has not been punished, is not that the Constitution and laws were not adequate, but that no reasonable attempts have been made to ferret out offenses and bring offenders to punishment.

As the laws stand, the expenses incurred by any county in investigating charges of corruption against members of the Legislature and State officers, must be borne by the county where the charges are to be investigated, and the district attorney of such county is not compensated for any labor which he may perform in the investigation and trial of charges and indictments for such offenses, except by the salary voted him without any reference to the labor which he may be called to assume in such cases.

It accordingly results that committing magistrates, grand jurors, and prosecuting officers have constantly before them the assurance that all labor and expenses incurred or performed in such investigations, will be a burden upon themselves

and their county, while they have no more interest in the investigation than have the citizens of any other portion of the State. It is clear that these expenses ought to be borne by the whole State. It is also undoubtedly true, that if these burdens were to be borne by the State at large, and the labors of the district attorneys in such cases were properly paid for by the State, we might reasonably expect that charges of such offenses would be pressed with a diligence and success such as we have never witnessed. It is also true that the Legislature have, under the present Constitution, adequate power to enact laws providing for the payment for the services and expenses mentioned. The undersigned, deeming that in view of the glaring evidences of corruption in State officers and legislators which are before the people of the State, it may be deemed desirable to make it obligatory upon the Legislature to provide for the payment for county expenses, and for the labor of district attorneys in investigating such charges, has reported for the consideration of the Convention two sections hereto annexed.

MARTIN I. TOWNSEND.

ALBANY, December 2, 1867.

SEC. — The expenses which shall be incurred by any county in investigating any charge of bribery, or attempting to bribe any State officer or member of the Legislature within such county, and of receiving bribes by any State officer or member of the Legislature in said county, shall be a charge against the State, and their payment by the State shall be provided for by law.

SEC. — The services of the district attorney of any county in investigating accusations, charges and indictments for bribery, or attempting to bribe State officers or members of the Legislature, and of receiving bribes by State officers and members of the Legislature, alleged to have been committed within such county, shall be a charge upon the State, and payment therefor shall be provided for by law.

The report was referred to the Committee of the Whole, and ordered to be printed.

Mr. AXTELL—I move that the Select Committee on Disabled Soldiers be permitted to report at any time this week. There has been no opportunity for calling the committee together.

The question was put on the motion of Mr. Axtell, and it was declared carried.

The PRESIDENT *pro tem*.—Under the rule which was adopted the last meeting but one of the Convention, unless otherwise ordered, the Convention will now take up the report of the Committee on Finance.

Mr. AXTELL—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Axtell, and it was declared carried.

So the Convention adjourned.

TUESDAY, December 3, 1867.

The Convention met pursuant to adjournment. Prayer was offered by the Rev. BERNARD McMANUS.

The Journal of yesterday was read and approved.

Mr. GOULD—Mr. Grant, of Delaware, has met

with a serious accident, having been thrown from a wagon, and I have been requested to ask for him indefinite leave of absence, he having promised to return here as soon as he can. I have also been requested to ask leave of absence for Mr. McDonald for two days.

There being no objection, leave of absence was granted in both cases.

The PRESIDENT—The special order is the consideration of the report of the Committee on Finance, as amended in Committee of the Whole. The pending question is on the substitute moved by Mr. S. Townsend, to the amendment offered by Mr. A. F. Allen.

Mr. E. BROOKS—Does the special order precede the call for petitions and resolutions?

The PRESIDENT—It does.

Mr. E. BROOKS—I move then, to postpone the special order for some five minutes, that I may offer a resolution relating to the order of business.

The PRESIDENT—That will require unanimous consent.

No objection being made, the special order was postponed for the purpose stated.

Mr. E. BROOKS—I offer the following resolution:

Resolved, That the Secretary report to this Convention, at the earliest practicable moment, the condition of the business of the Convention as it now appears upon the Journal of proceedings, the name and number of reports to be acted upon, together with the reports which have been considered in part, and those which are now before the Committee on Revision.

The question was put on the adoption of the resolution, which was declared carried.

The PRESIDENT—The Convention will now resume the consideration of the special order.

The SECRETARY read the pending amendment of Mr. S. Townsend, as follows:

The personal property in this State, represented by the capital of all incorporated or associated, rail, plank and turnpike roads, banks, trust and manufacturing companies, limited partnerships, and all other business corporations or associations with full or partial corporate powers, including also such indebtedness of such corporations or associations as virtually represents capital, shall be liable to taxation for general State purposes. All other personal property shall be exempt from any such taxation.

Mr. ALVORD—It is evident that, at the present moment, in any adoption that may be called for, we shall be without a quorum. I have no doubt myself but what there are a sufficient number of members of this Convention in the city to constitute a quorum, and I have no doubt that those who are now absent will be here at 12 o'clock. I, therefore, move that this order of business be dispensed with until 12 o'clock to-day, and that we go through with the regular order of business up to that time.

The question was put on the motion of Mr. Alvord, and it was declared carried.

Mr. C. C. DWIGHT presented the memorial of James Douglas and others, for the abrogation of the Regents of the University of New York.

Which was referred to the Committee of the Whole.

Mr. SMITH presented the petition of Herkimer Sternberg, for a temperance system of medical theory and practice.

Which was referred to the Standing Committee on Revision.

Mr. BEALS presented the petition of Prof. O. T. Barnes and sixty other citizens of Little Falls, praying for the abolition of the Regents of the University of New York.

Which was referred to the Committee of the Whole.

Mr. BELL presented the remonstrance of the trustees and principal of the Antwerp Liberal Literary Institute against the abolition of the Board of Regents.

Which took a like reference.

Mr. GOULD—I offer the following resolution:

Resolved, That hereafter the roll of members of this Convention be called by the Secretary at 12 o'clock M., and that the President be requested to withhold his certificate of attendance from all members who do not answer to their names.

Mr. BERGEN—I call for the ayes and noes upon that.

A sufficient number not seconding the call, the ayes and noes were not ordered.

Mr. BERGEN—I call for a count.

Mr. SEAVER—I move that the resolution lie on the table.

The question was put on the motion of Mr. Seaver, and it was declared carried.

The Convention then resolved itself into Committee of the Whole on the report of the Standing Committee on the Judiciary, Mr. C. O. DWIGHT, of Cayuga, in the chair.

The pending question was on the motion of Mr. M. I. Townsend, to reconsider the vote by which the amendment offered by Mr. Prindle was rejected.

The CHAIRMAN—The gentleman from Chango [Mr. Prindle] will please restate his amendment.

Mr. PRINDLE—The amendment which I offered was to provide that no chief justice or judge of the court of appeals should hold his office after he became seventy years old.

The question was put on the motion of Mr. M. I. Townsend, to reconsider the vote by which the amendment of Mr. Prindle had been rejected, and it was declared carried.

The question recurred on the adoption of the amendment of Mr. Prindle.

Mr. PRINDLE—The effect of this amendment will be to allow a man who is sixty years of age to be elected judge of the court of appeals, but his tenure of that office will be limited to ten years. Or the man can be elected at the age of sixty-five, to hold office for only five years. I claim that a nominating convention would not be likely to nominate a man who should be as old as sixty years when he could hold office for fourteen years, and could not be removed until the age of seventy-four; and if the section stands as it now is, we shall be compelled to nominate comparatively young men for the office. I think, too, that in such a court as the court of appeals is intended to be, we ought not to have a man on the bench

who is over seventy years of age. It is very seldom indeed that a man's physical constitution at that age can endure the labor necessary for the performance of the duties of that office. Occasionally there may be such a man, but the instances are very rare indeed. This will be a court which will be obliged to work hard, to work almost day and night in order to do the business that will come before it, and it seems to me that we should not make any provision by which we will be compelled to have a man of extreme age upon the bench, without any means of getting rid of him. It is well known that a man who has become too old to do business of this kind is the last man to understand that fact himself, and it is always a very delicate business to undertake to remove him in any manner whatever.

Mr. HALE—Is an amendment in order?

The CHAIRMAN—It is not.

Mr. HALE—Then I suggest to the gentleman from Chenango [Mr. Prindle] that he modify his amendment so as to allow the judge to hold office until the first day of January next succeeding the time when he attains the age of seventy years; in order that no vacancy may occur at a time when it cannot be conveniently filled.

Mr. PRINDLE—I think the suggestion is a good one, and I have no objection to modifying my proposition in that way.

Mr. SEAVER—Are we to understand that whenever a judge is elected he is to hold office until he is seventy years of age? Is seventy the limit?

Mr. M. I. TOWNSEND—I understand that the section, as it now is, will provide that judges shall be elected for fourteen years, but if that term shall pass the period when they attain the age of seventy years, they shall not hold office beyond that time. That is all.

Mr. COMSTOCK—In view of the remarks made by the gentleman from Chenango [Mr. Prindle] upon this subject, I hope this amendment will be adopted.

The question was put on the amendment of Mr. Prindle, and it was declared carried.

The CHAIRMAN—The question is now on the amendment of the gentleman from Steuben [Mr. Rumsey].

The SECRETARY read the amendment as follows:

"Insert after the words 'fourteen years' the following: 'The judges of the present court of appeals shall be judges of the court hereby created, and shall hold their office until the expiration of the term for which they were severally elected. The remaining judges of said court shall be so classified with reference to the present judges, that one of the judges of said court shall go out of office, and his place be filled by a new election, at the end of every second year.'"

Mr. WAKEMAN—A portion of this amendment would be in conflict with the amendment which we have already adopted; fixing the term at fourteen years and making judges ineligible. If we adhere to that amendment of course we cannot adopt this, for it would be in conflict with it. Now, I am in favor of continuing the present judges in office in some way if we can, or at

least making them eligible for seats in the court that we are about to establish. I should be quite willing that the judges should be elected in the manner indicated by this amendment. The result would be then, that we should go back substantially to the amendment offered by the gentleman from Clinton [Mr. Beckwith], which provided that judges should hold office for twelve years, and that the chief justice should be appointed by the Governor, with the consent of the Senate; and if we fix the present judges of the court of appeals, their terms of office expiring every alternate year, of course we can provide for the election of new judges, the same as we do now. As a whole, I am in favor of this plan rather than that the present judges should be ineligible.

Mr. SPENCER—If it is in order, I move the postponement of the consideration of this amendment until the committee shall have gone through with the entire article, with the view to then move an amendment, or a provision, which shall be applicable to the judges of the supreme court as well as to those of the court of appeals; making one provision applicable to all the judges. If that principle shall not be applicable to all the judges, then this provision may be considered and adopted; but it will be a useless repetition of verbiage to have a provision separately applicable to each of the several classes of officers that shall be created by this article, and it will be more convenient to have one provision which shall be applicable to all of them.

Mr. COOKE—I would like to inquire whether the motion to postpone this amendment carries with it the section?

The CHAIRMAN—It will not be considered as having that effect.

The question was put on the motion of Mr. Spencer, and it was declared carried.

Mr. COOKE—Is an amendment now in order?

The CHAIRMAN—A motion is in order.

Mr. COOKE—I offer the following as a substitute:

"The court of appeals shall consist of nine judges, one of whom shall be designated in a manner to be provided by law, the presiding judge. Five judges, of whom the presiding judge shall always be one, shall constitute a quorum for holding a term. The concurrence of at least four judges shall be necessary to reverse any judgment on appeal. The terms of the court of appeals shall be held at the Capitol at such times as the Legislature may prescribe. The presiding judge shall designate the judges to hold any term and shall have power to assemble at any time all the judges for consultation and review of any case or cases pending in the court, and to suspend judgment in any case argued or submitted in said court for the purpose of obtaining such consultation and review. The court of appeals shall have final appellate jurisdiction in such cases as shall be provided by law."

Mr. COOKE—I have listened attentively to the discussion upon this section, so far as it has progressed, with the view, if possible, to learn how the court, as proposed to be constituted, would be able to perform the work devolving upon it; but since I have been in the Convention the

debate upon this article has seemed to take a different direction, and has not approached this paramount question. It strikes me, sir, that before we undertake to shape the court in its details, and provide the exact tenure of office, provide how the judges shall be chosen, and for how long a term, we ought to direct our attention to the question of what kind of organization will be able to dispatch the business that must necessarily come before the court. Now, I invite the committee for a moment to a view of the figures as we have them in the Manual, volume 2, page 291, showing the work that devolves upon this court in the natural order of business. Since the court was organized in 1847 down to the end of the last year, the figures show that the cases brought into court are in excess of those decided and disposed of by it, to the number of two thousand and five. It appears that the calendar numbers now about one thousand. All the cases pending in the court are not necessarily on the calendar every year, because it is known to every lawyer that there is no hope of reaching a case now, if it is on the calendar, under six or seven years from the time the question arose. This is the great evil under which the people of this State are now suffering, the great evil to which this Convention is indebted for its existence—delay in the administration of justice, the blocking up of the court of appeals. Every suitor knows, almost every person in the State knows, that when a case comes to the court of appeals all proceedings in it are suspended for some six or seven years; indeed, there is no hope of such a case being reached except by the death of a party. A man dies, and his case passes over into the hands of his representatives, it thus becomes a preferred cause, and this is the only chance he has of getting his case heard in the court of appeals. [Laughter.] Now, this evil is a serious one. It has been said that the postponement of justice is a crime. If so, the organizers of the present court of appeals have committed a great crime in subjecting the people of this State to this all but interminable delay. Gentlemen seem to suppose that if a court shall be now organized substantially like the present—for I cannot, for the life of me, see any marked difference—they seem to suppose that if a court be organized now on substantially the same plan, and start even with the calendar, having a commission to dispose of the existing calendar, they can keep up with the business and keep the calendar clear. Now, I have already said that during the last twenty years, at the beginning of which period the court started nearly even, they have fallen behind in the race some two thousand cases; and we must remember that at present business is not so brisk in that court as it would be but for the war. I propose, however, to call the attention of the Convention to the years 1860, 1861 and 1862, before the depression caused by the war commenced to be felt in the business of the court of appeals. What was the condition of affairs in those three years? In those years there was an excess of cases brought into court over cases disposed of by the court, of six hundred and thirteen. At that time the system was in the full tide of successful experiment. The

court worked up to its utmost capacity, and the business of litigation was in every way untrammelled, and I refer to the results of those three years as showing what may be expected for the future. I claim that the business of our courts must necessarily come back to the condition in which it was before the war and must then go on increasing. It would be insanity to suppose that there is to be a permanent diminution of business in the courts of this State. As enterprise extends and business prospers, litigation will go hand in hand with it, and there is nothing to induce the belief that speculation will be less active in the future than it has been in the past. There is nothing to induce the belief that litigation will be in any way restrained or lessened in future years. This great evil was seriously felt on the assembling of this Convention, and the President, with a view to an effective remedy, selected a committee, composed of the first legal ability in the Convention, to go and search out where this evil lay, and to find a remedy for it. That committee applied themselves to their duties throughout the entire summer with a diligence that promised the most gratifying results. They held meetings in the evening, in the morning and at noonday; and finally, after three months of intense labor, they gave to this Convention the results of their discoveries and their efforts. They had discovered that the evil lay in having eight judges instead of seven, and that the remedy consisted in vacating the eighth chair of the bench of the court of appeals! For the life of me, I have been unable to discover any thing else in the report of that committee that can be said to be offered as a remedy to this great evil. Now I desire to express my absolute unbelief in this remedy whether its efficacy is supposed to consist in the lucky odd number seven or in the vacant eighth chair. As I said before, I have listened in vain for any explanation of how this diminished number of judges is to perform the vast amount of business that has already accumulated in that court and is constantly increasing. I inquired of some members of the committee, after they had presented their report, as to how this plan was expected to work so great a reformation. One idea seemed to be that the judges would work to so much better advantage if the court was composed only of men elected by the whole people, for that court instead of being in part recruited from the supreme court—that the plan of taking judges from the supreme court and putting them on the bench of the court of appeals, caused a good deal of delay from want of harmony and accord, so that business could not be dispatched to advantage. Now, I desire to devote a moment to the consideration of this matter, of working in harmony. What is the difficulty? I am not now advocating the retention of the system by which judges are called from the supreme court to the court of appeals; but I claim that it is idle to say that simply changing that feature, is going to effect so important a reform in respect to the working capacity of the court. How would the harmonious working of the court be secured by changing the practice of recruiting its bench, in part, from the supreme court? How does the court work?

The judges take their seats upon the bench; the presiding judge calls a case; the parties profess to be ready, and they commence the argument. The argument proceeds to the end. The judges then, all eight of them, set to work each with a piece of red tape, and tie up the papers in that case in a little package, which they mark and lay on the pile before them. It does not require any particular concert of action to accomplish this. The presiding judge then designates two judges to take the case and write up an opinion in it. That takes but a moment. It does not cause much delay, nor block up the calendar very considerably. In this way the court go through the calendar. The judges sit there until they have taken as many cases as they think they can examine and decide during the vacation, and then they adjourn the court, and every man goes home to write up his cases. Now, if the judges of the court of appeals tell the truth, they could hear no more arguments than they do at a given session, because they could not examine and write opinions in any more cases during the vacation. Every man takes home his cases, and at his own chambers writes out his opinions. Now, I am at a loss to comprehend how judges elected directly by the people of the whole State for that court, could write any more opinions than those experienced judges can, who are taken from the supreme court. The opinions in these cases are written; the judges then come together for consultation, and to compare notes and opinions, a week before the next term opens. Exactly what they do at such meetings I am not informed, except that we all know that in a day or two thereafter a list of their decisions is published. Now, will some gentleman tell me how a court could do any more business if it were composed of seven members, all of whom should be elected directly by the people? In looking over the report of the debates last week, or the week before, I find some gentleman is reported as having alluded to the fact that the judges elected to the court of appeals were called "regulars," and that those recruited from the supreme court were called "militia men," and, as I understand it, one gentleman stated to the committee that, in one instance, these "militia men" had been guilty of the enormity of voting down the "regulars" in the court of appeals. Well, it may have taken some little time to out-vote the "regulars," but is it any argument to address to members of this Convention to prove that this is the only change that is required in order to secure the dispatch of this vast amount of business. The distinguished gentleman from Washington [Mr. C. L. Allen] said that considerable time was taken up during the first term every year in the rehearing of cases that the court disagreed on the year before; whereas, he said, if the court was composed of permanent judges, they would be relieved from this difficulty and would not have to rehear any cases. If my recollection is right, sir, the number of cases ordered to be reheard at the end of every term is very inconsiderable, indeed. Some years there are none; other years there are one or two; but the number is never

sufficient to be made any account of in the discussion of a question of this kind. Now, if this is to be so, if we have such an accumulation of business upon the calendar that, with these eight judges working up to their utmost capacity, there are still between six and seven hundred cases accumulated upon the calendar every three years, is it not wise, is it not necessary, for us to stop and see if there is not some remedy, something that will promise relief. I do not believe in giving up in despair, feeling that there is no remedy for this evil, that there is no contrivance that can be framed by this Convention by which efficiency will be given to our court of appeals. But, sir, if there is anything in the way of permanent relief hoped for from this system as reported by the committee, why could they not have intimated their ground of hope in the report? I would have expected that when they gave this Convention the plan for which they claimed so much, and which my friend from Cayuga [Mr. Rathbun] says ought, on the main, to be adopted by this Convention, because it was recommended unanimously by the committee of fifteen—

Mr. RATHBUN—Will the gentleman give way for a moment?

Mr. COOKE—With pleasure, sir.

Mr. RATHBUN—I said I was in favor of five judges of the court of appeals, in preference to seven, and that I was in favor of a large diminution of the number of the judges of the supreme court; but I simply said that I thought the report was entitled to a good deal of consideration, because it was the joint product of a large committee of able and distinguished members of the bar, whose judgment and experience were worth a great deal.

Mr. COOKE—I presume the gentleman is right. I made the statement from what I read of the report of his remarks, but I did not read the report through. But it would have been more satisfactory to me, however it might have been to the other members of this Convention, had the committee given us a page, or even a few brief lines, setting forth some reason why they claim so much for this little change, simply reducing the number of the judges from eight to seven, and having the judges elected directly by the people, rather than taking four judges out of the supreme court. Instead of that, however, they have given us the skeleton of the plan, they have given us the article, supplemented by a very able and learned history and description of courts in England, Scotland and France, compiled evidently at the expense of a vast degree of labor, and a good deal of time. That paper is on our file, and it is a very interesting document; but I have not read far enough into the mystery of these courts to find out what practical bearing they have upon this question, or how their history tends to show that this court of seven judges is to do double as much work as a court of eight judges under the present arrangement. But the committee themselves do not suppose that this system will work and accomplish the result that is claimed for it. They provide, in the first place, for a commission which is to dispose of the business of the present calendar. The present calendar contains

from one to two thousand cases; so many having been already brought into the court of appeals in excess of what they have been able to dispose of. One thousand are on the term calendar; as to the other thousand, part of them have been settled, and a part have been left in the clerk's office, ready to be put on the calendar whenever there is any particular object to be attained by putting them there. The committee further propose that at the end of ten years the Legislature may establish a new commission, permanent in its character, and which shall have final appellate jurisdiction co-ordinate with the court of appeals, so that we are to make in this Constitution a permanent provision for two independent courts of last resort, to which parties are to have their causes submitted, rather than to a single court, having a single head. This system of commissions has been once distinctly submitted to the people of this State within a very few years, and emphatically voted down. The people did not like the system. It was urged upon them then to vote against that amendment in order that a Convention might be called to adopt some other system, which would furnish but a single court to transact the business of a court of last resort. Now I do not wish to detain the committee; but I do wish to call their attention briefly to what I believe to be a remedy for this overwhelming difficulty. It is with great diffidence that I present this substitute. I have never had the vanity to suppose that I knew just how to construct a court of appeals so as to answer in every respect the purposes for which such a court is required. I never supposed that I could perfect a system that would be faultless; but I have felt it my duty, in view of the utter hopelessness of accomplishing anything upon the plan submitted by the Judiciary Committee, to do something, to at least call the attention of the Convention to the subject, and see if we all together cannot do something which will be effectual in the right direction. The plan I propose is, to construct a court of nine judges. The substitute I offer is entirely silent as to how the judges shall be chosen, or for how long a term. It is not in conflict with any of the amendments now pending. It is not in conflict with the amendment offered by the gentleman from Steuben [Mr. Rumsey], who proposes to continue the present judges. I rather like that idea of incorporating into this court the judges who are now in office, and filling up the complement of nine; but the question, whether the chief judge shall be appointed by the Governor and Senate or elected, or whether all the judges are to be appointed or elected, is not involved in this proposition of mine. I simply propose to have a court of nine judges, giving judges enough for two alternate terms, to be held by a relay of judges, each branch of the court, however, always to be presided over by the same presiding judge. Now, this is my understanding of the working of this plan. Say, on the first Monday in January the presiding judge calls to the bench four of the associate judges, and they hold court for a certain term, say the first two weeks of January. Then they adjourn until March, and go home to write their opinions on the cases they have heard, all except the

presiding judge. He, in the next month, February, calls the other judges to sit with him and hold court in the same way, hearing all the cases they can examine during the interval, and then adjourn until April also to write up their cases. The presiding judge has charge of the whole business, and whenever a question comes up before the sitting court that has been once considered before the judges who are now absent, he can take measures to have the decisions uniform. If he finds that the sitting branch of the court are engaged hearing the same question argued that the other judges are away consulting about, he has power to call all the judges together in consultation upon that question and to see that they give but one judgment upon it, and when that judgment is rendered, it is the law. I do not see that this plan is liable to the objection of duality. It is in no sense a double court, except in its business capacity. Its unity is preserved, and yet it has double the capacity of the present organization. It has been objected to this plan that it will make a bungling, awkward, system; it will cause delay. It will cause delay in case the presiding judge is required to call all the judges together for consultation. It will cause delay for just sixty days from the time of the argument. That is all the delay it will cause, and now the cases are not decided until ninety days after the argument. But what is this small delay? Suppose it is necessary for the court that has held its session in January—in view of the fact that the same question has been discussed in February by the other branch of the court—suppose it is necessary to suspend the decision of that case argued in January, over until their next meeting, or to the second, which is in May. It can not go beyond that. I would like to know if there is any thing serious in that delay, any thing that ought to condemn the system without examination—particularly in view of the fact that at present we are subjected to a delay of seven years from the time the cause is taken into the court. As I said, I submit this proposition to the committee, and commend it to their attentive consideration. It may be faulty, it may be defective; but I certainly claim this for it—it is better than no effort to relieve ourselves from the burdensome evil of delay in the administration of justice, under which the whole community is suffering.

Mr. ANDREWS—I, sir, as one of the members of the Judiciary Committee, united in the report of the majority of that committee, to which the gentleman from Ulster [Mr. Cooke] has referred. I have no pride of opinion in respect to the particular recommendations of that committee, but I have great anxiety so to reorganize the judiciary of this State that the difficulties attending the present system shall be removed, and that we shall have a judiciary able not only to dispatch the judicial business of the State, but which shall maintain that high character which should be maintained by the judicial branch of the government. But I can only regret that the learned gentleman who has just addressed the committee had not been made a member of the Committee on the Judiciary, that the committee might have had the ad-

vantage of his views and wise counsels in framing the report which that committee should make, and thus have relieved the rest of us from that exhibition of incapacity to which he alludes. But while I am ready to consider his suggestions and while I shall act upon them, in view of the best light, which, as a member of the Convention, I have upon the subject, I must be excused for one from adopting the plan which he suggests as an improvement upon that suggested in the report of the committee. The question under consideration is as to the proper arrangement and organization of the court of appeals; and to a proper understanding of this question it seems to be important to consider the difficulties, if any, attending the present arrangement of that court, and whether the plan proposed by the committee would be likely to remove them if they are found to exist. It is true that there has been an accumulation of business in that court. Probably from ten to twelve hundred causes appealed to that court are now undisposed of. But gentlemen of the Convention will understand that a large number of the cases now undetermined have been appealed, not with the intention of procuring a *bona fide* review of the questions of law arising in them, but simply to obtain the time for payment which debtors have through the delay in reaching the causes appealed to that court. It will appear by the report, which will be found upon the files, that the whole number of cases appealed to the court of appeals in the year 1866 was two hundred and twenty-nine, and that the number of cases disposed of during the same year by that court was about two hundred and thirty-three—two or three in excess of the actual number of cases appealed.

Mr. COOKE—If the gentleman will allow me—the figures that I have show three hundred and eighty-seven brought into court, and three hundred and twenty-seven disposed of.

Mr. ANDREWS—The authority for the statement which I have made is the return made by the clerk of the court of appeals upon that subject, to this Convention. I desire to call the attention of the Convention for a moment to the difficulties in the organization of the present court of appeals which have tended to the obstruction of business in that court. As we all know, the system has been to elect four judges, known as judges of the court of appeals, and to add to this body annually four judges from the supreme court, who serve for a year as judges of the court of appeals; and I think that every lawyer familiar with the business of the court of appeals understands how this constitution of that court has tended to delay its business, and to prevent the speedy disposition of the cases pending before it. Because it is impossible for eight men brought together and acting together but for a single year, to become so familiar with the practice of the court and the numerous questions previously decided therein, as to enable them to act together promptly upon questions coming before the court for decision. The judges of the old court may understand what decisions have been made. The new judges, who are annually introduced, are necessarily less familiar with its decisions. There

are a great variety of questions which a single and permanent court, familiar with its own decisions, will dispose of upon suggestion, which, in a court composed of new judges, would require argument and consultation. And this has been one of the reasons which has prevented an efficient working of the court of appeals under the existing system. The Judiciary Committee believed that if a permanent court was organized, consisting of men who should sit together from year to year, familiar with the course of practice, and with the decisions of the court, it would be enabled to act efficiently and with far more vigor and promptness in respect to a great variety of questions which should come before it. Another thing. There is, on the part of the supplementary judges, annually introduced into the court, a want of that earnestness, a want of that interest, in the business before that court which is inseparable from the nature of their connection with it. It is a difficulty inherent in the system. You cannot expect that four men, coming into a court, a new court, but for a single year, knowing that they are to leave it at the expiration of that time; during the year also liable to be called upon to perform duties as judges of the supreme court; it is not to be expected that they will have that interest in the reputation and character of the court, and in the business before it, which would be taken by a bench of permanent judges, devoting their whole attention to its business. To my mind, if the Judiciary Committee had reported nothing else in respect to a change in the organization of the court of appeals, that single change from an unstable to a permanent court will contribute to a dispatch of the business of that court, and will enable it to keep up with the current litigation of the State which may reach it. Before passing to another consideration bearing on the question of the delay and obstruction of the business in the court of appeals, I desire to refer for a moment to the plan presented by the gentleman from Ulster [Mr. Cooke]. It is substantially, as I understand it, to make a court of appeals, to consist of nine judges, five of whom shall constitute a quorum, four of whom shall unite in the determination of a cause, the object being, by a division of the court into sections, to enable a court to be kept constantly in motion to dispatch the judicial business of the State. Of all the suggestions which have been made to this Convention, in respect to the organization of a court of appeals, this is, I think, the very worst one which has been presented to the attention of the committee, because if there is any one thing which seems to me indispensable to secure the dignity and to secure the influence of the court of appeals, it is an organization which shall give unity to its decisions, which, in my judgment, will be absolutely prevented by any system which supposes that a bench can be divided, a portion of them hearing cases a part of the time, and then being succeeded by another bench from the other division of the court. One of the great evils in the organization of the supreme court lies precisely here: the want of unity and harmony in respect to the decisions of that court, inseparable from the constitution of the court which

allows a variety of general terms with co-ordinate powers to consider and pass upon the questions brought before them. Gentlemen say that the chief justice may, in his discretion, call together the whole court for consultation. Practically it would result in simply this: that each branch of the court would decide the cases brought and argued before it, leaving the other branch of the court when it succeeded to the bench to decide the cases brought before it. There would be no unity of purpose. There would result, in my judgment, a want of uniformity and stability in the judicial decisions of that court, which would shake the confidence of the people in it, and destroy its influence, in and out of the State. The Judiciary Committee had before it representations in respect to the organization of the court of appeals from nearly all the judges of the court of appeals, and from various other eminent legal gentlemen throughout the State, and I believe, with one single exception, all of them united in fixing the number of the court at seven, and all of them affirmed that it would be destructive of the influence of the court to make the number so large that it was capable of division into sections, acting separately and independently of each other. But, Mr. Chairman, in my judgment there is another reason why the court of appeals has been obstructed in its business. It is a fault lying partly with the Legislature and lying partly with the organization of the supreme court, from whose judgments appeals are taken to the court of appeals; and it is this: I think, whether well founded or not, that there is among members of the bar and among suitors throughout the State a distrust of the judgments of the general terms of the supreme court in this State. I would not say, because I do not believe it, that there has been a lack of intelligence, a lack of learning, a lack of industry on the part of the judges who have been upon the bench of the supreme court; but I do say this, that the very fact that the decisions of general terms conflict so greatly with each other throughout the State detracts from their authority; the fact that judges who have tried cases at the circuit participate in the decision at the general term, gives color for the belief which, well founded or not, on the part of the bar, or on the part of the suitors, is all pervading and prevalent, that the decisions of general terms, rendered under such circumstances, are more or less influenced by the bias of the judge who tried the cause, seeking to maintain his own decision; and it is too frequently true that lawyers in the State go to the supreme court at general term only because it is a necessary step in the progress to the court of final resort. Another thing, there has been no check upon the power of appeal to the court of appeals. Although it has been within the power of the Legislature to limit the cases which should be allowed to go to the court of final resort, that power has only, to a very limited extent, been exercised, and the result is that every judgment in the general term, where the defeated party is desirous of time, is appealed to the court of appeals, the only penalty of an appeal being finally the payment of costs to the prevailing party, while it gives to the party appealing that

which he most desires—time within which to provide for the payment of the final judgment. If the Legislature shall provide that no appeal shall be taken to the court of appeals in cases of affirmance by the general term of the judgment of the court below, except upon condition of allowing the party prevailing at the general term to have the fruits of his judgment upon giving security for restitution; or if some other means shall be adopted by which those appeals shall be restricted only to cases which really and in fact involve important questions, there would be no difficulty in the court of appeals arising out of the obstruction of business in that court. And more than this, if this Convention shall be wise enough and bold enough so to organize an appellate court as a branch of the supreme court, as to give not only to lawyers but to suitors, confidence in the decisions of that court, then the number of appeals to the court of appeals will be greatly restricted. We all know the position, standing and authority of the supreme court of this State under the old Constitution. I do not say that the men who occupied seats in that court were abler or more learned than the judges who now occupy seats upon the bench of the supreme court; but I say what is beyond controversy, that the influence of a decision by the supreme court, under the old Constitution, was tenfold greater in the State than the decisions of one of our branches of the general term. Why was it? It was because the men composing those general terms knew nothing of the cases coming before them, until they were brought on for argument; because from the constitution of the court itself there was no reason for suspicion, on the part of suitors or on the part of attorneys, of bias or prejudice in that court in the decision of cases. In my judgment, one important means of preventing obstruction in the court of appeals lies in the proper organization of the supreme court, and further than that, that even if no such remedy is applied, we shall, by constituting a court of appeals of seven judges, holding permanently and acting together, have a court capable, and able to discharge all the business coming to that court. I only intended to speak, when I arose, upon the plan presented by the gentleman from Ulster [Mr. Cooke]. It is not, I think, deserving the confidence which he himself reposes in it; and until I shall see some improvement upon the plan presented by the Judiciary Committee, I shall adhere to it in preference to the plan presented by the gentleman from Ulster [Mr. Cooke].

Mr. M. I. TOWNSEND—I only rise for one purpose, and that is, that the gentleman has spoken of the distrust which is manifested among the profession in the decisions of the supreme court. I wish to call anew the attention of this committee, and of the gentleman himself, to the fact, that while we try in this State, and the supreme court of the State, either at special or general terms, decides not less than ten thousand causes in a year, not four hundred of them are appealed to the court of appeals, which does not indicate any such distrust as eloquent gentlemen say exists in the minds of the people of this State, in regard to our present supreme court.

Mr. COMSTOCK—I did not happen, Mr. Chairman, to sign the report of the committee which is under consideration. I did, however, approve of its principal provisions as decidedly and as warmly as any other member of the committee. My own signature was withheld from the report on account of the absence of a provision which has since been adopted by a decided vote of this Convention, and I am, therefore, very glad now to be able to say that I do approve of the report of the committee in all its main particulars and provisions, and shall sustain them, so far as I am able to, on the floor of this Convention. It would be saying a great deal too much to affirm that the Judiciary Committee had all the wisdom which is attainable on this very grave and complicated question, but it is not going too far to say that that committee had this judicial system under its most careful and anxious consideration. Every feature of it was the subject of most serious deliberation, from day to day, during several months of the sitting of this Convention, and the result of its labor is now before this body. I do not suppose that any two men could be named who, if they were to propose, each according to his own judgment and preference, a judiciary system for this State, would propose systems exactly alike. I do not suppose that any two committees would propose systems exactly alike. Whatever is adopted must be the result of common consideration, of common compromise. We must have some system. We must have a court of appeals, the best working and most efficient court which is attainable. There is no royal road to jurisprudence. We must have a plain, direct, straightforward bench, composed of earnest, working men, to do the business of the State; and, in regard to the number of men, it should not be too great or too small. Men will differ as to the exact number of which it should be composed. I have no doubt, however, upon one question, and I think that no intelligent man can well doubt upon it. The court of last resort in this great and wealthy State should be a unit. It should be composed of such a number of men, and only of such a number of men, as can deliberate together upon every cause which is brought before that tribunal, and who can exercise their united judgment in the decisions of that court. On this ground I feel myself entirely opposed to the amendment offered by the gentleman from Ulster [Mr. Cooke]. I do not say that his plan is the worst that human ingenuity can conceive, but I do say that, in my humble opinion, it is not one to be commended or accepted. If his plan does not propose two courts of last resort, it certainly does propose one court working and operating in two different sections, leading, in my judgment, to diversity of opinion and of decision. You are to have one set of men, according to that plan, hearing, deliberating upon and deciding one class of cases, and you are to have another set of men hearing, deliberating upon and deciding another class of cases, with a chief judge as a figure-head to both, whose principal function, so far as I can understand it, would be to take charge of the manners and deportment of the bench. In the first place, I think the gentleman from Ulster [Mr. Cooke] greatly exaggerates and

overstates the amount of arrearages in the existing court of appeals. I know very well, as he says, that if you go to the files of the clerk of the court you will find some two thousand appeals apparently undisposed of; and if you look upon the calendar you will find about one thousand there which have not been heard. I think, Mr. Chairman, the existing calendar of the court of appeals about fairly represents the amount of business in arrear. We all know—every lawyer certainly knows—that a great many appeals are brought, the returns of which are filed with the clerk of the court, which never get upon the calendar at all, and they are disposed of without further litigation. We all know, too, very well, that if you look at the calendar of the court there are a great many causes there which, although not struck from the calendar, have been actually disposed of by some compromise or settlement between the parties; and I am inclined to the opinion that the causes actually on the calendar, but disposed of in that way and which will never be heard, are equal to the number of undisposed appeals not upon the calendar; so that the calendar, on the whole, about fairly represents the arrearages in that court. There is, I admit, a very serious delay in the administration of justice, a delay which ought to be remedied by this Convention, and by the people, if it can be. I think, sir, that that government which does not, which will not or can not administer prompt and speedy justice to its citizens is unworthy of their affection and regard. But I have no doubt that a single court, constituted substantially in the way recommended by the Judiciary Committee, will be able to do the appellate business of the State for a generation to come. As has been said by my friend and colleague from Onondaga [Mr. Andrews], the inefficiency of that court—and its inefficiency can not be disputed or denied—is due very much to its organization. It is due in a very great degree to that annual change of members which takes place. We know very well that every year four members of that court, consisting of only eight, go out, and their places are supplied by new men who are inexperienced—certainly in that court—in its precedents and traditions. And every two years the change is greater than that, for five members of the court go out and are supplied by five newly elected or designated. This is a very great infirmity in the organization of any judicial tribunal. It has always been my opinion, from the opportunities of observation which I have had, that the efficiency and the working power of the court would be nearly doubled by the change in its organization proposed by the committee. It is of very great consequence, of very great value in the administration of justice, if you have men sitting together who have become used to one another's opinions and modes of deliberation. By sitting and remaining steadily in the court they learn its unreported precedents and modes of dispatching business, and they work together with facility and ease. Such a court can dispose of a great deal of the business before it without the time expended in writing long opinions. There would be disposed of at the close of the argument, or at least the next morning after the argument, many

cases in which judges now go to their homes and return with long opinions for consultation. The existing court of appeals with all the defects in its organization, and with the unrestricted right of appeal during its history of twenty years, has after all disposed of five-sixths if not of seven-eighths of the business which has been brought before it. You may take the number of appeals which have been brought into the court, the number of cases which have been heard and decided, and then look at the number which have not been heard and decided, and you will find that I am correct in this statement. It has disposed of more than five-sixths of the business which has been brought into that court, and I understand that for the last one or two or three years the accumulation has been very slight. I think I am authorized therefore to say, that if you will reform the organization of the court, if you will constitute it as the committee has proposed, there will be no lack of force and power in that court to dispose of the appellate business for at least twenty years to come.

Mr. GRAVES—I will ask the gentleman if his experience shows that there has been a conflict of opinion between the standing members of the court of appeals on legal questions and those that go into the court from the supreme court?

Mr. COMSTOCK—I think such cases do sometimes occur, but they are rare. There are not many cases in which the standing members of the court are all arrayed on one side, and the transient members all arranged on the other side. That is not the difficulty of which I am talking. Besides a radical change in the organization of the court, something ought to be done, and something doubtless will be done by legislation. There should be some legislative restriction upon the right of appeal. I think it will be found to be true, if you examine the calendars carefully—and I have examined them in that view—that in nearly one-third, certainly in one-fourth of the causes appealed to the court of last resort, the value or sum originally in controversy never exceeded \$250. It has always seemed to me that causes of that kind should never be brought into the court except under the peculiar and special circumstances to be certified by the court below. It was the opinion of the committee that some restriction should be placed on the right of appeal, but they felt the difficulty of doing that by constitutional enactment, and therefore they thought it best to leave it to the judgment of the Legislature. For many other reasons, Mr. Chairman, which I do not care now to take time to dwell upon at large, I trust the amendment of the gentleman from Ulster [Mr. Cooke] will not prevail.

Mr. FERRY—I think I have discovered another objection to the plan proposed by the gentleman from Ulster [Mr. Cooke]; that although it contemplates, in substance, in view of the dilatory transaction of business, that two courts should be in session at once, it makes it necessary that the chief justice should form one of the number in each of those courts. I imagine that there will be as much difficulty in relying upon the permanent attendance of any one particular man as there would be in keeping together the entire court; cer-

tainly as much as the proportion that one bears to the whole number. I would advise no plan which should provide for so organizing the courts as inevitably to require the attendance of the chief justice in order to form the court, for the reason that I think it is as impracticable that he should always be there as that any other member of the court should always be in attendance. However, as has been stated, by the gentleman from Onondaga, who first spoke [Mr. Andrews] I think the principal objection to that system is its want of unity. I can hardly contemplate with any degree of satisfaction the idea of having a divided court made up for the court of last resort. If any court in the State ought to deserve the confidence of the people, it certainly is the court of last resort. I have no doubt that a difficulty, and a very serious difficulty, from which arises the embarrassment of that court, is the amount of business before it. I am also satisfied of the fact of a want of confidence in the decisions of the supreme court at general term, notwithstanding that my friend from Rensselaer [Mr. M. I. Townsend] seems to think otherwise, and, as illustrating that point, and my own opinion in regard to it, permit me to state a few facts occurring in my own experience. I commenced practice under the old system and continued it for several years. I can go to my law register and show any man the exact number of fifty-one cases that went to the general term of the supreme court, under the old system; and I think I am correct in saying that, in forty-nine out of the fifty-one, I was successful. It was, perhaps, rather flattering to me that it was so. I am sure that I did not aim to be right any more than I have since, and I am unwilling to believe that I was any more competent than I have been since the new system went into practice. I have lived in a district where I have no reason to believe that, personally, I have been obnoxious to the judges, for my personal relations to them wherever I have practiced have been agreeable. Yet I must confess that my success, since the adoption of the Constitution of 1846, has been such that I do not desire to state it, for it has not been at all flattering to me. I submit to any lawyer, or to any one else, what impression these results must have made upon my mind as to the constitution of the present court. And I have certainly heard a great deal of complaint of the same character from others practicing at the bar. What conclusions must I necessarily arrive at from my own experience? I must either admit that I am losing my capacity, and that my experience, instead of benefiting me, has lessened my competency, or else there must be some fault with the courts. I have stated this much of my experience, as a truthful illustration of this system, that members of the Convention may judge of its value. Certainly, with such experience, I cannot have a very good opinion of the system. These faults did not arise from a want of intelligence, honesty, industry or capacity on the part of the men who have sat upon the bench during this time, for they were laborious men and honest men in the main; but the thing has become so mixed up with errors

connected with the organization of the court that there is no certainty in the result, in any case, and I am bound to say plainly, that I cannot predict with any certainty what the result will be before the courts. Of course this state of things begets distaste for the practice of the profession, and if any thing would induce me to quit the profession entirely, it would be to have the settled principles of law thus frittered away and made uncertain. To a man who loves the profession of the law, there is a certain pride in its study and in the knowledge of its principles which we cannot look on complacently and see violated by the court, even when deciding a case in our favor. There is a love for the profession and for the study of it as a science in any man with the ability to deal with it properly which is wounded by seeing its principles brought into confusion and the symmetry and beauty of the science destroyed.

Mr. GRAVES—I would like to ask my friend from Otsego [Mr. Ferry] whether his remarkable success before 1846 did not give him so much assurance as to induce him to take up a worse class of cases after that, and whether that may not have been the reason he was so unfortunate?

Mr. FERRY—I have no idea that I was governed by any such influence; and as to my experience, it has been common to other gentlemen, to other members of the bar who practiced at the same time. The fact that the court was formerly composed of three judges, led to a uniformity in their decisions, and especially with regard to questions of practice; and let me say, what members of the profession will indorse, that a large majority of the cases reviewed relate to practice. It did seem to me that if any thing uncertain could be certainly known it was what the decision of the old court would be upon a question of practice, and the same thing ought to be possible now. Now, if I have any desire in this world, in regard to this question, it is that we should be able to construct a system which should be the best possible. Every man has in his mind a system somewhat different from any which has been proposed, either by the Judiciary Committee, or by any other member. I am ready to admit, and I do not suppose that any gentleman doubts that the Judiciary Committee worked diligently and faithfully, and tried to give us as good a system as was in their power: but they labored under the same difficulties we have met here, and had to compromise their opinions in regard to various questions. Let me now suggest to members of the profession what seems to me a remedy for this evil, for if there is an evil in this world that is one—I allude to the great accumulation of business. What I would desire, and what every man practicing the law would desire, would be to bring the administration of justice to his own door; so that when he had business to transact with the court it should be as near his residence as possible, and always open. It is impossible to imagine any thing more perfect than to have a court to which a man can conveniently resort whenever he has any business to bring before it, and if we can make a court of that kind why shall we not do it? If we cannot make the court perfect, we should approximate to it as near as possible. It

is true that every man cannot have the court at his door; and now that railroad communication over so large a portion of the State is so rapid and easy, that is not so important as the question of delay. It is not so important how far the parties and their witnesses must be compelled to travel, as how long they are to be delayed, before the case can be reached. The convenience of the court is comparatively a small matter, we should look to see what men, devoting a reasonable time to the matter, like business men, have power to accomplish, and that you can pay them for doing. I think we should consult the convenience of the people, and pay the judges for transacting their business in the way they desire it to be done. I cannot imagine that, with a court of appeals sitting constantly, there will be any trouble in transacting the business with reasonable celerity. I do not think it is necessary, as some suppose, to spend so much time in writing opinions; and upon this question I appeal again to members of the profession. I do not like to be compelled to read over so much matter to find the point upon which the case was decided. I prefer the English system. I hardly take up a book and read a lengthy opinion of a case with which I was familiar, but I discover some weak points in the opinion. It arises from the fact, not that I am more wise than the judge who decided the case, but that I know more about the particular case; and although the judge was accurate in the main facts he was considering, yet when he came to treat of incidental points that arose in the case, he discusses them with an imperfect knowledge of the case, and will sometimes state things that are not true. He is betrayed into the error by the unnecessary length of the opinion he undertakes to prepare. I really believe that if we will take seven gentlemen and set them to work, and require them to keep the court open, and pay them for their services, we shall have an efficient and united court. I do not want two courts, or a divided court. Let them be united and decide the cases before them, and I believe they can do it to our satisfaction, and do more work than has ever before been done. I hope the Convention will come to that conclusion; but if it shall not, I hope, at least, that it will leave the provision in such form that the Legislature shall have power, beyond all question, to make this court what it should be to meet the wants of the people of this State.

Mr. COOKE—I sincerely sympathize with my friend from Otsego [Mr. Ferry]—

The hour of twelve having arrived, the PRESIDENT resumed the chair in Convention, and announced the special order, being the report of the Committee of the Whole on the report of the Committee on the Finances of the State.

Mr. ALVORD—I move that the special order be deferred until the evening session.

The question was put on the motion of Mr. Alvord, and it was declared carried.

The Convention again resolved itself into Committee of the Whole, on the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

Mr. COOKE—I wish it had been so ordered that the good luck of the gentleman from Otsego

had come last; it would perhaps have left him in a better frame of mind to meet all the duties that devolve upon him as a member of this Convention. He stated this objection to the substitute; that the presiding judge, who, according to the plan I propose, was always to be in court as its head, and under whose direction it would be, might at some time be absent through sickness or other cause. If the gentleman will look through the section as I have proposed it he will find that the Legislature are to make provision for the appointment and perpetuation of this office. Now, without following the gentleman from Onondaga [Mr. Andrews], I propose for a moment to look at some of the positions assumed by him. He professes to be satisfied that the permanent working together of the judges will so facilitate the dispatch of business that we shall not have so large an accumulation of business on the calendar as we now have. Yet I do not hear either of these gentlemen declare the opinion that the evil will be entirely remedied by the plan they propose. But the gentleman [Mr. Andrews] says, the justices of the supreme court, when they go upon the bench, do not feel the same interest in the court as though it belonged to them, as though they had been made for that court specifically and expressly. Let me inquire, what lack of interest there is on the part of judges of the supreme court? Are they not equally patriotic with their associates whom they find there? Do they not equally feel responsible as judges? Why, sir, in my humble judgment, the court of appeals has found itself indebted to the supreme court for some of its best judges during the past twenty years, men just as patriotic, just as well disposed to perform their duties faithfully, and just as able as though they had been elected to that bench. What peculiar interest is felt by judges elected to the court of appeals I cannot understand. There is a chief judge of the court of appeals elected, and he, as much as any man can, owns the court. He has the direction of the business; he can lay it out; he can direct what arguments shall be heard first; and in what order the calendar shall be taken up, and how the business shall be distributed. My friend, Judge Comstock, says he does not like the court as I propose it; he wants a court in which every case will be brought under the personal examination of every judge. Is that the case now, and does the article reported propose any change in this respect? I ask gentlemen who are acquainted with the manner in which the business is done, the manner in which the business of the court of appeals is distributed after argument, whether this objection comes with a good grace from that quarter? It is as well known as any other fact that is not published in the rules of the court, or enacted in any statute, that the seventy-five cases (which, I believe, is the maximum number heard at any one term) are all put out and distributed, each case to two judges, for their special examination and opinion. They are specially charged with these cases. I would inquire of my friend from Albany [Mr. Parker] and the gentleman from Onondaga [Mr. Comstock] and other members of this Convention, who have been judges of the court of appeals, how much atten-

tion is given to these cases by those whose duty it is not to write an opinion on them, being cases with which they are not specially charged. They give their assent or dissent; they can, as has been said, nod their assent, or shake their heads in dissent. But if any judge feels a particular interest in a case, on account of its local importance, or general public importance, he may go to work, voluntarily, and write out an opinion. I claim it is not true of the present court—that every case receives the personal examination of every judge—such an examination as would be necessary to give his judgment the force of authority. The gentleman also states that he wants a court that will be more efficient, judges who are accustomed to thinking and acting together, and who are accustomed to each others mode of thought, that they may dispatch more business. If we are to have the independent judgment of the judges on every question, if we are to have the judgment of the individual members, I do not know how it can be so important that each judge should exactly understand the peculiar working of the other judges' thoughts. An argument is addressed to the intelligence and judgment of each one of the members of the court. He is expected to look upon the case and exercise his own judgment in his own peculiar way. It may be that they may get so acquainted with each other, that two or three members of the court will think it is of no earthly consequence how the other judges feel, or what they think, and decide of themselves, and thus "expedite the business." A case of that kind is reported by the Committee on Judiciary. I will read it. I do not know for what reason it was reported, unless, in the judgment of the committee, it had a bearing upon the proposition of my friend from Onondaga [Mr. Comstock].

"The Lord President in telling the division would ask, 'my Lord A., how does your lordship vote?' Lord A., fairly awake, would answer by a counter question, 'How does my Lord Justice Clerk vote?' The President would reply, 'my Lord Justice Clerk *adheres*,' upon which Lord A. would at once tender his vote thus, 'Then I *adhere*.' His Lordship having thus discharged his duty would resume his nap, for he was extremely comatose." (2 McQueen, 685.)

Now, the Lord President had become thoroughly acquainted with Lord A.'s mode of thought, and I have no doubt it contributed to the dispatch of business. But, as I said before, if it is worth while to have the judgment of the court upon every given case let that judgment be exercised and pronounced by each judge in his own way. The gentleman admits that if the court is constructed in the way he proposes, it may want some restrictions upon appeal; and that I believe is the result of the collected wisdom of the gentlemen who have argued against my proposition. That it is necessary there should be some restrictions, after all, upon the right of appeal. There should be a court below the court of appeals, and restrictions should be placed upon appeals from that court. Mr. Chairman, as long as there is a court of appellate jurisdiction, which in itself supposes that there are imperfections, that there is fallibility in the court below, we should leave the doors

of that appellate court open. We should leave an avenue open to the court of last resort; and, Mr. Chairman, we should open an avenue through it, as well. I would like to ask my friend from Onondaga [Mr. Comstock] whether, if he had had the court, proposed by the committee, at his elbow during the years 1860 and 1861, when he was at the head of the court, he could have heard, argued and decided four hundred and three cases more in those two years than he did with the court defectively organized as it was! I do not understand either of the gentlemen to claim that a court of seven judges could do all the business that comes into that court. But they ask, first, that the right of appeal be restricted; secondly, as I intimated before, they ask that there be another and independent court constructed, acting perhaps under, and in subordination to the court of appeals, and yet to take the place of the court of appeals in deciding these cases. While these gentlemen are talking about the efficiency of the court as they propose it, why do they not offer to strike out the fifth section, which reads as follows:

SEC. 5. At the end of ten years from the adoption of this Constitution by the people, the Legislature shall have power to provide for the appointment of a commission to hear and determine such causes as may be transferred to it by the court of appeals, in such a manner as the Legislature may direct.

Now, I say, when the committee propose a system of this kind they should not impute improper motives to every body who questions its wisdom. They should not charge us with presumption in undertaking to assail their particular plan, and especially where they admit in plain terms that the system they propose renders necessary another court of last resort. This section allows a permanent commission to be established by the Legislature, which is to take, not any particular class of cases, to be specified by the Legislature, or by this Constitution, but the court of appeals shall send to that commission just such causes as they want to get rid of themselves and as they think proper for the commission to decide. The gentlemen who propose this system object to my substitute on the ground that the court proposed is not a unit; they demand unity for this court. They demand unity in the court of last resort, and yet they cannot get through with their system without establishing an independent court whose judgments are to be of equal verity and authority with the judgments of the court of appeals.

MR. M. I. TOWNSEND—They establish two courts at the beginning.

MR. COOKE—Yes, the first commission is to go through the present calendar and is to continue, I don't know how long, I think three years. This will leave an interregnum of seven years, at the end of which term the Legislature are to construct this new court. Now, when the committee presents such a system as this, I claim that my friend from Onondaga [Mr. Andrews] should not fall into bad temper or bad manners because some members of this Convention see fit to dispute its wisdom and efficacy. I do not believe this Convention can ever be brought to adopt

the plan of the Judiciary Committee. I should feel that we had made no advance, no progress, if such a calamity should fall upon the State. I do not doubt but that they presented the best system they could under the circumstances. We have the word of the committee for that. I do not doubt the wisdom of either of the gentlemen on that committee. The difficulty is with the subject itself. Here are fifteen independent men, statesmen, able men, men of great intelligence and experience. Either of them could have perfected a system that would have done credit to the State. But when they get into committee they find after three months of labor and effort they are unable to present a system that meets the entire approbation, I presume to say, of a single man on that committee. Now, one word further. The gentleman from Onondaga [Mr. Andrews], says his remedy, after all, is not in the construction of the court of appeals, but in the construction of the supreme court. There should be such weight, such respectability given to the decisions in the supreme court that people will not care to take an appeal to the court of last resort, and cases will be comparatively rare in which appeals are taken. I have no doubt something can be done in that way, yet a gentleman whose ability and experience in the court of appeals entitles his opinion to great weight, says a great many of these cases are brought into the court of appeals simply to gain time. I do not know how he estimates the number of appeals that are taken simply to gain time. But can any reform effected in the supreme court induce men not to take the chances in the court of appeals, with the hope, at least, of putting off the day of payment? This is an evil that cannot be guarded against so long as litigation is as cheap as it is now. I venture to predict (the prediction to be sure, may be worth nothing) that so long as a resort to the court of appeals is as cheap as it now is, there will continue to be cases appealed and taken into that court on the flimsiest pretexts, on the smallest points. It is a very questionable policy, in my judgment, to cheapen litigation. But that seems to be the policy. It was the policy that governed the Convention of 1846, and it probably never will be changed. When we have cheapened litigation I say it is our duty to look around and see how we can allow parties to come into and go through court. It is our duty to provide a court that can accommodate them. If cheap courts are to be had we must have enough of them to furnish facilities for the dispatch of business. I see no propriety in calling the tribunal contemplated by my substitute two courts, simply because, while four judges are examining cases which have been argued, the other five are hearing arguments. Why should it be represented as two courts? The presiding judge, as he sits on the bench, says the gentleman from Onondaga [Mr. Comstock], is a figure-head for both of these courts. How is he a figure-head? He sits there, directing the business of both branches of the court. He hears arguments. His judgment is called for, and he has to decide upon every case after having personally examined it. He does not go out and write as many opinions as the other judges, but he has to hear the arguments and take entire control of the

court. I would like to ask my friend, how many of the questions that are argued in the court, in the course of a year, will admit of a diversity of opinion among the judges? Not many, I venture to say. Certainly, the large proportion of cases that are appealed to gain time cannot suffer from a want of unity in the court. If a case which the presiding judge has just heard argued is before the second branch (if you please) of the court, will there be any difficulty in calling the judges together and having them pass upon it? How much time will it consume? How much trouble will it necessitate? I repeat, it is admitted that the system these gentlemen propose cannot get on without two distinct courts. The recommendation of the committee is for two distinct courts, one to be called a court of appeals, the other a commission, a kind of tribunal created by the Legislature to whom the court of appeals can farm out such cases as it pleases to be decided, as by contract. Now, what is the duty of this Convention? Should we not look for some remedy, some way of avoiding the difficulty which seems to be upon us? If we cannot have a court as we want it, on account of the multiplicity of business, if we cannot get along with one leg, give us two legs; let us try it in that way; let us preserve the unity in the best way we can, and then get such decisions from the court as the nature of the court will admit of. I see no difficulty about it. The matter is not of such vital importance; if a decision happens to be wrong, the Legislature can apply a corrective unless we take away their power. They can correct, for the future, any decision the court of appeals can make, if it is wrong, by changing the law. I do not, for the life of me, see how decisions from such a court, constituted as I propose, are more likely to be wrong. We have five men upon every question—five good lawyers chosen from among the best in the State. They are to pass upon every question. It is not a matter of such terrible moment if there should be two decisions differing from each other. What harm grows out of it? Is the harm any thing to be compared with the evils growing out of this interminable delay in the dispatch of business? I do not know that it is presumption in me to ask that this substitute be adopted, and then amend it to suit the views of the committee. I know the difficulty of carrying any distinct proposition on this subject. I had rather take a contract to procure twenty propositions, the best that twenty of our best men can propose, to be rejected, than to procure the adoption of either one of them by this Convention in the present stage of its deliberations on this subject.

Mr. M. I. TOWNSEND—I do not know that I am prepared to say that I deem the proposition of the gentleman from Ulster [Mr. Cooke] the best that could be devised, but the idea conveyed in the section now proposed by him, and under consideration, concurs with what I have from the first deemed necessary for the carrying on of our court of appeals, the preserving of uniformity and the doing of justice to the people of the State. That is the proposition to enable the court to sit perpetually; to have such a number of judges constituting the court of appeals as will render it

perfectly practicable that one court should sit in January, another in February, and so on through the year. All sorts of objections have started from this proposition; and I think the very number of the objections proves that the proposition is right. One of the greatest objections, and the greatest that I see offered to this system, is that we are to have two tribunals, *i. e.*, the court of appeals will be a double-headed court. From whom does this objection come? I do not speak of the personality of individuals. But what are the views of the men who make this objection, that we are to start with two utterly independent courts? Men who would not allow the court of appeals to divide its numbers in such wise that five men should be sitting perpetually as a court, because it will create duality, because it will give a double-headed character to the court. They propose that we shall start off with two courts; one to decide cases already accumulated, and another to decide cases that are hereafter to come into court. And not only that, they propose, at the end of ten years, to give the Legislature power to create another and newer court; so that we are to have two positively independent courts of appeal, according to the views of gentlemen, sitting for the disposition of these cases; so that the duality of this court, the double-headed character of it, is not the real objection in the minds of those gentlemen. Can it be possible that any gentleman would reject this system because of its double-headed character, when the same gentleman is ready to create a court entirely independent of the court of appeals to decide the one thousand cases now on hand? Suppose, as we have a right to suppose, that among those cases are many which involve important legal questions; those legal questions are to be decided by this court, and at the same time the new court is to have jurisdiction and take cognizance of the same questions, entirely independent of the continued court, the commission. In the proposition of the gentleman from Ulster [Mr. Cooke] one element of the court is that it is to be continuous and uniform; the presiding judge has to sit in all causes, and to aid in the decision of causes, whether old or new, so that it is the proposition of the gentleman from Ulster [Mr. Cooke] that is to give unity to the court, and not the plan of the gentlemen who are contending for unity. Sir, the objection that rests in the minds of those gentlemen is to be found somewhere else. There is some other objection on their part to making this arrangement, whether expressed by them or not. If I were to guess at that objection, I might guess wrong; there are a great many things I might guess; I might guess that the wish really was to shove out the men who have been elected by the people to the bench of the court of appeals, and to leave the way open for the constitution of an entirely new court. But as I have said, I might guess wrong, and therefore I will not guess what the real reason is; but I do say that want of unity is not the trouble. Now, it is said by the gentleman from Onondaga [Mr. Comstock] who last addressed this Convention that the chief justice, who hears all the arguments will be but a "figure-head." Sir, I dispute it. This Convention is largely made up

of lawyers, and we know what the fact is; we know that it is not every case in the present court of appeals in which every member of the court writes an opinion, and yet every member who sits and hears the argument does in point of fact participate in the decision. Is the gentleman who, under our present system, sits and hears the argument and participates in the decision, but writes no opinion, a mere "figure-head?" Are the English judges, when sitting in the court of last resort before the case is carried to the parliamentary court, deciding as they do ninety-nine cases out of every hundred, without ever leaving their places, and without writing any opinion whatever, mere figure-heads? I appeal to the experience of the gentleman from Onondaga himself, and I ask if, when he sat in the court of appeals and participated in the decision of a number of cases, in a large majority of which other gentlemen necessarily wrote the opinions, he considered himself a mere figure-head? Sir, the gentleman did not consider himself a figure-head by any means; his opinion was as important as that of any other judge who sat in the decision of those causes. If this idea be correct, then all but two of our present judges of the court of appeals are mere figure-heads in the decision of each case. But, let us see if these difficulties are to occur. The proposition of the gentleman from Ulster [Mr. Cooke] requires that four judges should concur in the decision, five, including the chief justice or presiding judge, or by whatever name you choose to call him, sitting to hear the argument. Now, unless the four judges agree unanimously—I mean those who have gone out to deliberate—and come to the same conclusion, three of them must come to the same conclusion, and the chief justice or presiding judge who heard the argument hears the opinions written by the judges who have gone out to deliberate—three of them must concur, and the presiding judge is to give his vote with them. Now, can there be any such thing as uncertainty as to the decision of a court so constituted—any thing like a want of uniformity. Sir, we must not entirely discard our experience; the whole eight judges of the present court of appeals are not required to sit to constitute a court. There are eight judges in the court, and yet but six are necessary to hold court. There must be great diversity in the constitution of the court even as it is now, and even during the year in which judges come from the lower courts. Now, my friend from Onondaga [Mr. Andrews], who has just addressed the committee in opposition to the proposition of the gentleman from Ulster [Mr. Cooke], dwelt upon the injury that results from judges coming from the supreme court to the court of appeals. He might have saved his time entirely in regard to that, because I undertake to say there is not a man living in favor of that feature of our present system, not a single man, either in this Convention or out of it, so that, although the gentleman is quite right in his view upon that point, it weighs not a whit in this discussion. We were already agreed that judges should not sit in review of their own decisions, because, being mere men, they often become prejudiced in favor of their preconceptions than convinced by new arguments. There-

fore, as I have already said, all are already convinced of the truth of that view, and if it pertains neither to the proposition of the gentleman from Ulster [Mr. Cooke], nor to the proposition reported from the committee, nor to the proposition presented by the gentleman from Steuben [Mr. Rumsey]. Now, sir, we are to do one of two things: we are either to do what has been proposed and shove aside the gentlemen who now constitute the court of appeals without any fault of theirs, without any dissatisfaction with them either among the lawyers or among the people; we are to shove them aside and constitute two courts of appeals for the sake of producing "unity," or else we are to give to the court that we shall constitute, power to sit with such a number as to facilitate the decision of cases already heard by one portion of the court, while another portion are sitting in court and listening to the arguments in new cases. This is precisely the question that is most important in the proposition of the gentleman from Ulster. As I said before, I am not wedded particularly to that proposition. The proposition of the gentleman from Steuben is susceptible of amendment in precisely the same way, to constitute a court of seven, four members to hold the court and three to concur in the decisions. Some persons may say that this is not a large enough number, and I think I have heard it intimated that this would not be a sufficiently large number to give dignity and consequence to the decisions of the court. If that be so, I wish to commend that view of it particularly to my friend from Onondaga, who last addressed the committee, and who sung the praises of the old supreme court in such melodious strains, for that court was constituted of but three persons, and it was not only large enough to transact the business that then came before it, but it appears that it gave such satisfaction that the very odor of it has come down here with a sweetness to the memory of my friend, such as he can never forget.

Mr. SMITH—Will the gentleman permit me to ask him a question? I wish to know what kind of a court of appeals the gentleman would organize, if he could have his way in regard to it.

Mr. M. I. TOWNSEND—I must decline to answer my friend from Fulton, because it is already ascertained that it is utterly impossible that he and I should see any thing through the same glasses; mine are altogether too old for him. [Laughter.] Now, I am sorry to break in upon the harmony of that song sung by my friend from Onondaga, because it was a delicious strain of eulogium, and I have no doubt that my friend from Otsego [Mr. Ferry] would concur in that song. But let me say that it was not the fact that every body had the same delight in the proceedings of that old supreme court that these gentlemen had. That court had a way of deciding against somebody at the same time that it decided in favor of the other party; and in all those thirty-nine cases in which my friend from Otsego succeeded, there were thirty-nine dissatisfied persons, or else one person was dissatisfied thirty-nine times. [Laughter.] And, although I may violate the classic proverb, "*De mortuis nil nisi bonum*," I undertake to say that the old supreme court, in 1846, stood in no better favor at

that day with the bar than does the supreme court of the State of New York at the present day; and it was so for the reason I have stated, that a great many men had had decisions against them. And I say another thing, borne out by the history of the times, and that is, that as large a proportion of the causes decided by the old supreme court were appealed to the court for the correction of errors as are appealed to the court of appeals from the decisions of the supreme court now. Sir, in that golden age (when Saturn ate up his own children)—because you know that these things run together—[laughter] in that golden age we were not the State that we are now. This State has since doubled its population and quintupled or sextupled its business. Am I wrong about this thing? Am I wrong in saying that, in the last twenty years, the State has quintupled its business and its business interests? I said the other day that we have now in this State some ten thousand decisions by the special or general terms of the supreme court every year, and probably we have many more than this number; but we have had ten thousand decisions by the supreme court every year, and, of these, less than four hundred have been carried to the court of appeals. The distrust of our supreme court, which some gentlemen talk about here, exists nowhere except in their imaginations. Here and there some of us get very sore when we have a succession of causes decided against us. I would not have it understood by gentlemen here that I have always been successful, or that I have always felt that the courts decided correctly. There has been no court in the State that I think has not sometimes made mistakes. I speak of the courts in reference to their general character. But I am wandering from the subject. I will simply say that we have to do one of two things: either get this desired unity by creating two courts, or else we are to give to the court that we shall constitute the power of sitting with such a number as to promote the decision of cases already heard by one portion of the court, while another portion are listening to the arguments in new cases. My friend from Onondaga [Mr. Andrews] has hinted at another remedy, one which has sometimes been spoken of before, to prohibit a large proportion of those who desire to have their cases reviewed from having them reviewed by a higher court. Now, I think that the gentleman from Otsego would feel that his case was very hard if we should adopt that provision. If he had five cases, in regard to three of which he had doubt whether he ought to succeed, decided for him, and two of the cases, in which he had no doubt he ought to succeed, decided against him, and if we voted in this Constitution to prohibit his appealing those cases except upon hard and onerous conditions, he would feel that we were doing a great injustice. Now, I differ from the proposition of my friend from Ulster in regard to one thing. I do not believe that litigation is any too cheap; I believe that the expenses of litigation are heavy enough and burdensome enough in all conscience, and I would not make them any more so; but if a party, knowing that he has a large sum to pay his counsel over and above what can be collected from his antagonist even if he succeeds, and feels interest enough

in the question to present it to a court so far removed from his locality as to be unquestionably above the reach of local prejudices in regard to it, I would be the last man to put an obstacle in the way of his doing so. I do not believe, sir, in this summary mode of dealing with small cases, saying that they shall not go to the court of appeals. The interest of a man who has but five hundred dollars at stake is probably dearer to him than the interest of the man who has ten thousand dollars involved is to him; in all human probability he is more affected by the loss or gain of the amount he claims than the man who has ten thousand dollars involved is affected by the loss or gain of the amount that he claims. As the gentleman from Ulster [Mr. Cooke] has well said, the State of New York is able to furnish a court for the transaction of the people's business, and it would be a shame for this State to put its court of last resort upon a basis which would probably make it necessary to deny to the small interests of the State the advantage and the right of having their cases reviewed whenever they desire it.

Mr. VAN COTT—My friend from Rensselaer [Mr. M. I. Townsend] seems to think that my friend from Onondaga [Mr. Andrews] is guilty of inconsistency in saying that the supreme court of 1821, which had but three judges, was large enough for the appellate functions exercised by it at that day, and that the court of appeals, consisting of four judges, under the pending proposition, would not be large enough to exercise its functions properly at this day. The supreme court of that day sat in review of the judgment of a single judge at circuit, or as vice-chancellor; a court of three judges sat as a court of review. A court of appeals at this day, composed of four judges, if you make it in accord with this section, is to sit in review of the judgments of a bench of four judges in the supreme court, and six in the superior court. Now, I think my friend from Onondaga [Mr. Andrews] is quite consistent in saying that the supreme court was large enough for its functions then, and that a court of appeals, consisting of four judges would be too small for its functions now. I was a little amused at the mode adopted by my friend from Ulster [Mr. Cooke] to attract to his proposition the confidence of this committee. He professes great respect for the gentlemen composing the Judiciary Committee. I would make a deduction from that large profession of respect, certainly with reference to one member of it. But he had very great confidence in all the members of the committee, as individuals, but no respect whatever for their collective judgment; and the reason assigned was not a personal one, but involved a general principle: that when so many were acting upon one subject there must be a wide divergence of opinion, and there must be a compromise in order to arrive at a common result, which would necessarily be incongruous, and lack the symmetry of a single idea or plan originating in a single mind. Hence the judgment of the gentleman was, that the opinion of any one member of that committee, or of any one member of the Convention, would be very much better than that of the fifteen gentlemen composing the Judiciary Committee. Hence, you see, sir, how he arrives at the conclu-

sion that you may discard the judgment of the fifteen lawyers constituting that committee who for three months had the subject under their anxious and laborious consideration, and adopt, instead, the opinion of the single gentleman who presents this substitute. But there is one practical difficulty, and that is, that he has no means or power to incorporate his system into the Constitution. After all, he has to commend it, not to fifteen, but to one hundred and sixty different minds, and he finds, when he comes here with his proposition, instead of fifteen gentlemen, each having his own system and preference, one hundred and sixty gentlemen, each of whom may have his own system and preference; and he is obliged to get the concurrence of a majority of the one hundred and sixty members in order to have his system adopted, upon the same principle of compromise, with the effect of which, in the committee, he finds so much fault. Now, I thought for a moment that we had arrived at a most happy position, that we had been withdrawn from the discord of a committee of fifteen and given over to the unity of a single opinion; but we have hardly got there before we are remitted to the incongruous opinions of the one hundred and sixty different gentlemen whose views must be in some degree harmonized before we can reach a decision. Now, let us see what this symmetrical plan about which the gentleman speaks, is. I understand that he proposes to take a bench of nine judges and divide them into two courts, of four judges each, with the ninth judge to be called the chief, or presiding judge, and to preside over each of the courts in their turn. His reason for this division is, that, instead of having nine judges, holding a single session of the court, and therefore sitting for only a portion of the year, there can be one bench sitting one portion of the year, while the other bench is deliberating upon cases heard at another period of the year—in other words, that two courts can all the time be in full operation, one hearing arguments while the other is deliberating, and one deliberating while the other is hearing arguments. Practically, therefore, he gives two courts of appeal, with a single judge to preside over each court, and you will perceive that it necessarily follows, that if the judges cannot hear causes with the deliberation necessary to decide them continuously, that must apply to the chief of the court as well as to the other members of it, so that the chief judge, who is always sitting with one or the other branch of the court can never have an adequate opportunity to deliberate upon causes which he has heard, so that you practically reduce the court to four judges—a court with four judges, with one to preside over its sittings. Four judges will hear a cause and go out and deliberate upon it, while the other four judges will come in and hear a cause in order afterward to go out and deliberate upon it. Let us now see the practical results of this plan. He makes it necessary for four judges to concur in the reversal of a judgment. Did you perceive, sir, what that leads to? If four judges must concur in the reversal of a judgment, one judge can always affirm the judgment rendered below. You have a court of four judges, four hear a cause, three of them are

in favor of a reversal of the judgment, but the fourth does not concur, and his judgment being in conflict with that of the other three, affirms the judgment below. That does not strike me as an immense improvement upon the present system. It may very well happen that you would thus, by a judgment of the court of last resort, affirm a judgment obviously erroneous, according to the general sentiment of the bar. You not only have such a decision standing as the judgment of the supreme court until the time comes for it to be again reviewed, but you have it upon the judgment of a court of review, affirming it and settling it to be the law of the State, and that effect produced by the opinion of a single judge against the opinion of the three judges who sat with him and heard the case! More than this: you may, at the very next term of the court, have the other section of the court sit in review of a similar question, and arrive at directly the opposite result, also by the opinion of a single judge against the opinion of the other three. That would be a very beautiful condition of things produced by an appellate court, whose function it is, in the last resort, to hear appeals and declare and settle finally what is the law of the land which is to bind all men in their persons and property, in their private and in their political relations. My friend from Ulster [Mr. Cooke] says, suppose that, if one judge is for affirming the judgment, there may be three judges in favor of reversing it; then the chief justice, who presides, may concur with the three, and so reverse the judgment. You then come to this practical result. I have already pointed out how the chief judge cannot take the time for deliberation which the other judges do. The very object of a division of the court, upon the gentleman's theory, is to allow those who hear arguments in one branch to go out and carefully consider the case and write their opinions, while the other branch of the court, presided over by the same chief judge, sits and hears a new batch of cases. The system forbids the chief judge to go out and consider the cases which he has already heard. It retains him in the court all the time, and yet you propose to enable him, without any opportunity to consider the case, to overrule the opinion of the judge who first examined and considered it, and whose carefully-considered opinion, up to this point, has prevented the reversal of the judgment below.

Mr. COOKE—Would not the presiding judge, in that case, have just as much time to deliberate as either one of the judges would have by the system you propose, if they do all the business?

Mr. VAN COTT—I am not discussing my system at present, but the gentleman's system. His whole structure goes upon the idea that the court cannot go on in one continuous session, but that it must be divided, one part hearing while the other deliberates, and one deliberating while the other hears; and I say that, if that necessity exists in reference to one judge, it exists in reference to all the judges equally, not excepting the one judge whom you call chief. Either the gentleman is right or he is wrong in saying that it is necessary to break up the court whenever the arguments are to be considered and the case decided. If he is right, then he defeats the scheme in the way I

have already shown; if he is wrong, then his scheme is wrong in destroying the unity of the court; and I do not care which dilemma he accepts. Let me pause here for a moment upon the number constituting the court, upon the plan of the Judiciary Committee. My friend made rather a humorous point, that the court, as it now exists, has eight judges, and he said, with a plausible air which will tell out of doors, where these things are not always carefully considered, that we propose to remedy the difficulty, which is that the court cannot do the work, by reducing the number to seven. More work is to be done, says he, and instead of increasing the number of workmen you diminish the number. That seems to be a manifest inconsistency; and then he proposes to get over the difficulty by adding one judge instead of taking one away, and by splitting the court in two. This last element of his plan is perhaps the most important, for I suppose that the mere addition of one or two judges, without splitting the court into two parts, would amount to nothing, as I think a jury of twelve just as effective as a jury of thirteen, and a bench of seven judges just as efficient as a bench of eight or nine. In fixing the number of judges to constitute this court, the committee were controlled by two considerations: one was that the bench should be large enough to have weight, sitting in review of a large bench of judges, in the courts below, four or five judges in the supreme court, and six in the superior court of the city of New York—a court which ought to be a court of great learning and weight, especially in commercial causes. Now, to give a court of appellate jurisdiction due weight, it must have a bench as large or larger than that of the court below: and seven was fixed upon to make the bench large enough to provide against the contingency of a judge being sick, or necessarily absent because of sickness in his family, or from any other casualty; they made the number seven that there might always be a bench of at least five judges. Then they thought it necessary to preserve the unity of the court, and the gentleman's plan was considered in the committee, his bench of nine judges was considered there, his dual court was considered, the practicability of getting on with a more rapid dispatch of business by having two branches of the court was considered. We turned his ideas over and over again, and weighed them there with more care than we have time to weigh them here, and in the minds of the committee they were outweighed by the consideration that it was necessary to preserve the unity of the court and so secure that uniformity in its judgments which would make the law certain. We wanted a number of the best minds in the country in that court, and we wanted them there continuously for a long term of office. We wanted a bench imbued with all the learning that should belong to our highest court—living in the atmosphere of its traditions, and in the atmosphere of its unreported as well as its reported decisions. We wanted that bench as a unit, in order that the living law might be clearly expressed, so that the citizen might know certainly what the law was, and might know by what rule any question with which he was concerned was to be determined. We did not want one

court deciding one way on a question to-day, and another court deciding the other way to-morrow. We thought that the condition of that people whose law is uncertain was most unhappy, and we desired that the people of this great State should live under a uniform and known rule of conduct; and that end, as we thought, could only be secured by preserving the unity of the court, which can best be preserved upon the ideas embodied in the report of the committee. Now, it is said here, you are inconsistent yourselves gentlemen; while wishing to preserve the unity of the court, you in the first place turn over the unfinished business of the existing court to a commission, and you further provide that another commission may be constituted by the Legislature at the end of ten years. Well, sir, I do not see any inconsistency. There is no inconsistency in the constitution of the court itself. The inconsistency is supposed to be in allowing something else, at the same time, to take part in the determination of appeals. Well, now, sir, that provision has reference to a necessity that the committee did not create, and that it cannot overrule. There is a large arrearage in the business of the court which we do not wish to see continued; but it is impossible for one court to take up the business in arrear, and, at the same time, to go on with the current business of the court, without being overwhelmed, as the court of appeals is at present, and without leaving this mischief unabated. This provision we made to meet that special exigency, that these unfinished causes shall be determined by the present bench, sitting as a commission, while we constitute a new bench for the new court we create. Then the committee have done another thing; while they believe that the court which they propose would be adequate for the dispatch of this business, they do not attempt to prophesy, and it may be that the business of the State, as the gentleman from Rensselaer [Mr. M. I. Townsend] has said, will quadruple itself in the next twenty years, that this new court will be overwhelmed with this immense increase of business. We have provided against a contingency which may or may not then exist. We do not want a court too large now for the demands of the present time; but we do want a provision, that if, contrary to expectation, a condition of things shall exist ten years hence, which will demand such relief, that relief may be had upon the plan of the committee, or some other adequate plan, without an amendment of the Constitution. As I said before, there is no inconsistency in the constitution of the court itself; that stands as a unit; that is a single court, a permanent court, a court with a single bench that settles the law of the land, and so settles it as to win the universal respect and confidence of the people. But I have yet to hear more than I have heard upon this subject, to convince me that the plan of the Judiciary Committee is not, substantially, the best that can be presented to this Convention.

Mr. LANDON—I would like, through the Chair, to ask the gentleman from Onondaga [Mr. Comstock], since it appears that the proposition of the gentleman from Ulster [Mr. Cooke] was considered in the committee, if they also considered the question whether it would be practicable to divide

the business of the court so as to send the equity business to one branch of the court and the law business to another branch, and thus, by keeping those two classes of subjects entirely distinct, avoid any conflict? I would like to ask if they considered that plan, and if so, what was the result?

Mr. COMSTOCK—The question of dividing the judicial business of the State into its old divisions of law and equity was very carefully considered by the committee. The decision was, that that was a work which they could not wisely undertake. Those jurisdictions have been so long suspended under the existing Constitution and laws of the State, and the public mind and the profession have become so much accustomed to the union of those two branches of jurisprudence, that the committee did not think it wise to undertake a change in that department. They left them therefore as they found them, believing that neither the profession nor the people were prepared for the change which the gentleman suggests.

Mr. LANDON—But would it not be practicable to so divide the business that you could send before one branch of this court a peculiar class of cases, and keep that peculiar class always there? If you did not agree to preserve the distinction between law and equity cases, you might invent some other distinction, so that the same kind of cases might be continually brought before the same court.

Mr. COMSTOCK—Provided this Constitution should create a court in two series as proposed by the gentleman from Ulster [Mr. Cooke], there is nothing to prevent the Legislature, if they see fit, from classifying the business and determining what kind of business should be sent to each branch of the court. That would not require a provision in the organic law.

Mr. SMITH—The gentleman, from Rensselaer [Mr. M. I. Townsend], while occupying the floor a few minutes ago refused, very curtly and cavalierly, to answer the question which I put to him as to how he would constitute the court of appeals if he could have his way. I asked the question with a view of eliciting the gentleman's opinion upon that subject. I was aware, as he intimated himself, that he was a man of large experience. I knew that his head was white with the snows of age, indicating wisdom, and was anxious to know what kind of a court of appeals he would like to organize, as we are here for the purpose of interchanging views, and trying to devise the best judicial system in our power. I had listened very intently to some half a dozen speeches from the gentleman upon this subject, and had been utterly unable to ascertain what he did want. I had learned a good many things that he did not want, things that he was dissatisfied with, but was wholly unable to glean from any of his speeches what he did want. Hence it was, that in a friendly spirit, and with a desire of gaining information, I put the question. But the gentleman refused to answer, and gave as a reason for such refusal, that his views widely differ from mine upon most questions discussed here. That, I submit, is not a very satisfactory reason for withholding his answer from this

Convention. I admit that we do differ upon most questions, and I am not altogether sorry that it is so. I often have occasion to distrust my own opinions, especially when I have an opportunity to compare them with those of gentlemen of wisdom and experience in this Convention who differ from me; but when I hear from the gentleman from Rensselaer that I differ from him on most questions, it gives me courage, and a greater degree of confidence in my own opinions than I should otherwise have. The gentleman says that the reason why we differ is that his glasses are too old for me. I admit that I have less experience, very much less experience than the gentleman; but I may be permitted to answer in the familiar words of a British statesman in reply to the charge of youth and inexperience, that I trust I may be one of those whose follies cease with their youth, and not among the number who are ignorant in spite of experience. [Laughter.] I do not think that the gentleman from Rensselaer quite fairly represented the committee who reported this article, or their proposition in regard to what he termed "a double-headed court." The committee need no aid from me; they are abundantly able to take care of themselves; but it is important that this matter should be rightly placed before the Convention. The gentleman asserts that those who argue against the proposition to create a dual court cannot be sincere, because, he says, the plan of the committee contemplates a like arrangement in the provision for a court of appeals and a commission to accompany it. Now, I do not quite understand it in that way. I understand that this committee have aimed to create a single court, a court possessing unity, which it seems to me, every one must admit, is a very desirable quality. They have provided, it is true, for a commission as a temporary, not as a permanent arrangement, so that it is not a fair presentation of their scheme to say that it provides for a permanent, "double-headed court," such as is contemplated by the amendment now under consideration. It is certainly desirable that there should be a commission to clear off the present accumulation of business. It is true, also, that the committee have provided that if in ten years there shall again be an accumulation of business requiring the aid of a commission, it may be called into existence; but as I understand it, that is merely a provision to meet an exigency which may possibly arise, but which it is hoped will not arise. I am of opinion that if the reform proposed in relation to inferior courts of the State be adopted, it will render the revival of a commission unnecessary. I believe that seven judges, constituting the court of appeals, and acting together in unity as one court, will be able to dispatch all the business that shall come before them from the inferior courts, if those courts are suitably organized. I believe it for the reasons so ably and lucidly stated by the gentlemen who have addressed the committee against this amendment. I stated the other day, while this subject was under consideration, that the decisions of our courts do not stand as high in other States as the decisions of the courts of the great State of New York ought to stand, and as-

signed as a reason the unfortunate organization of both the supreme court and the court of appeals. I made no charge against our judges, but expressly admitted that we had able and worthy judges upon the bench, and stated that the difficulty arose from our defective judicial system. But my remarks elicited very sharp criticism from the gentleman from Rensselaer [Mr. M. I. Townsend], who seems to have fallen greatly in love with our present system, and who questioned the correctness of my statement. I made allusion to a decision in one of the courts of Pennsylvania, which is now before me, and which I beg leave to read for the benefit of the gentleman from Rensselaer, and also for the purpose of corroborating statements made here by other gentlemen in regard to the defective organization of our courts. It is in the case of the Pennsylvania Railroad v. Henderson, and may be found in volume 51, Pennsylvania Reports, at page 327. Read, Justice, in commenting upon certain cases decided by our court of appeals, says:

"There is also another difficulty made apparent by these cases, arising from the singular constitution of the court itself. Four permanent judges of the court are elected for eight years by the people of the whole State. There are thirty-three judges of the supreme court, a subordinate tribunal, elected in eight judicial districts, four in each district, except in the city of New York, which has five. These judges are also elected for eight years, and four of them are selected every year from the class having the shortest time to serve to be judges of the court of appeals. So that the permanent judges have, during their term of office, eight different sets of associates from an inferior court, vested with equal powers, and having an equal voice with them in the decision of every case. It is therefore impossible, with an annually fluctuating court, that there can be a uniform and consistent course of decision, commanding the confidence of the bar and the people."

I submit, Mr. Chairman, that this presents fairly, clearly, and distinctly, the difficulty which exists in the organization of our present court of appeals; and that it justifies my statement that our judicial decisions do not command that respect that they ought to command, and would command were our courts differently organized. Now, sir, whether the provisions which we make here shall retain the present judges of our court of appeals in their positions or not, it seems to me is not very essential, and is not a question about which we should trouble ourselves. We are here to make a Constitution, not to elect men to office, and in our consideration of this matter, the question for us should be: What is the best scheme that we can devise for a court of appeals to remedy the evils that exist, and secure the approbation and confidence of the people of the State? I prefer the provision as it now stands to the substitute of the gentleman from Ulster, and shall therefore vote against his amendment.

Mr. M. I. TOWNSEND—I spoke at some considerable length giving my views of what ought to be the constitution of the court of appeals. At the conclusion of my remarks upon that subject, my neighbor from Fulton

[Mr. Smith] springs upon me the question, "What sort of a court would you have if you could constitute the court as you please?" I leave it for this Convention to determine whether any object whatever could have actuated that gentleman's mind except to offer an insult to a gentleman who had hitherto treated him with the most perfect courtesy. It was not my choice to take offense at the insult clearly intended, and I preferred to answer it in a kindly manner, without resenting the insult which was evidently designed. All that I wish to say is that that is my apology to the Convention for refusing to answer the question put by the gentleman from Fulton [Mr. Smith]. The gentleman has seemed to suppose that he was called upon to charge me with being "ignorant in spite of experience," because I declined to answer that question. Now, I have no quarrel with the gentleman from Fulton. All I wish to say is this: If that gentleman considers himself commissioned to render my position in this Convention uncomfortable by querulously attacking me on every occasion when an opportunity presents itself, he will do well to remember that there are blows to take as well as blows to give.

Mr. HALE—I rise to say a word in reply to the honorable gentleman from Schenectady [Mr. Landon]. I understood him to inquire whether the Judiciary Committee had considered the feasibility of a division of the court of appeals, and a division of the business, so that a certain class of business should go to one branch of the court and certain other business to the other. Now, that was a matter that was before the Judiciary Committee and was very fully discussed. Whether a formal motion was made on the subject I cannot say; but I know that it was suggested to the committee, I think by myself, that such a division might be made, and that a certain class of cases, as, for instance, those which are, under our present system, triable without a jury, corresponding to the old equity cases, and appeals from the surrogate's court, might go to one branch of the court, and appeals from decisions in common law actions to the other branch. The objection was raised that, although the subjects might be distinct and different, still the principles involved in them would, in very many cases, be the same; and we should have the court of appeals settling principles of law one way in one class of cases and settling the same principles precisely the other way in another class of cases. This was a consideration which weighed strongly with the committee. The only question upon which any of the committee had any doubt was whether it was possible for a single court of appeals to accomplish as promptly as it should be done the business of the court. It was considered by all that it would be an evil to divide the court in any way or upon any plan that could be devised, but that, if it was necessary, it should be done upon such a plan as would produce the least evil results. We had upon that committee two gentlemen who had been reporters of the court of appeals, one of whom had served eight years as a judge of that court, and they were both very familiar with the business of the court and its capacity to do business. They were both

decidedly of the opinion that if the court were relieved from this element of frequent change, and the old business were given to some other tribunal, so that the court might start even with a new calendar, there would be no trouble in seven judges performing promptly all the business of the court. Relying upon their judgment in the matter, and also upon the facts which were brought before the committee in relation to the annual number of appeals, and the annual number of decisions, the committee came unanimously to the conclusion that it would be better to continue a single court than to try the experiment of a dual one in any form.

Mr. COOKE—If the committee came to the conclusion that a single court could do all the business, why did they insert this section which provides for a commission?

Mr. HALE—I think the gentleman must have misunderstood me. I did not say that we came to the conclusion that a single court could not only do the business that might accrue hereafter, but could also dispose of the accumulated business of the present court, but that if they were allowed to start even, with a new calendar, having a commission, or some other tribunal to dispose of the business already accumulated, they could keep up with the accruing business. And I may say here that the commission is a mere temporary expedient, necessary in order to meet the peculiar circumstances now existing by reason of the immense arrearage of business which must be cleared up in some way. It is very evident that it would be unfair to a new court to compel it to go through with these thousand or fifteen hundred or two thousand cases, whatever the number may be, of cases now pending in the court, before starting with the causes appealed under the new system; and for that reason, as a temporary expedient, and not with a view of having a permanent court, the committee provided for a commission, to continue not more than three years.

Mr. COOKE—I believe I understood the gentleman. I alluded to the commission provided for in the fifth section.

Mr. HALE—That is the commission at the end of ten years. That section merely gives the Legislature power, in case we should prove to be mistaken in our expectation that the court would be able to transact the business, to establish a commission. But the report of the majority of the Judiciary Committee does not contemplate that there shall be a commission at the end of ten years, but merely provides that in case its business should so increase that the court organized under our proposition should prove inadequate to keep up with the business, there might be a commission provided for by law, without the delay that would attend an amendment of the Constitution. Power is given to the Legislature to provide a remedy.

Mr. COMSTOCK—One word further in reply to the question of the gentleman from Ulster [Mr. Cooke]. That provision for a future commission at the end of ten years was inserted by the committee for the very purpose of meeting the doubts of just such men as the gentleman from Ulster, and I presume he is not alone in the opinion that no

single court, no court that is a unit, can for the next twenty years dispatch all the appellate business of the State. It was to meet doubts upon that subject, and for that purpose mainly, I may perhaps say for that purpose solely, that the committee thought it wise to provide this expedient. It was done merely to meet a possible evil. It was the deliberate judgment of the committee that the evil will not arise. But they knew very well that others would differ from them on that point, and they therefore provided the expedient referred to in the question of the gentleman. One word also in regard to the commission proposed for the dispatch of the existing business in the court of appeals. I am sure that involves no inconsistency in the plan of the committee or in the course of any members of the committee. The gentleman from Rensselaer [Mr. M. I. Townsend], for whose opinions I generally have very great respect, has thought proper to suggest a doubt as to the reasons and motives of the committee, for that feature in their report. He charges the members of that committee with inconsistency, because, while they advocate unity in the court of last resort on this floor, they have nevertheless inconsistently admitted duality into their own plan. That allegation is very unjust and very unfounded. There is no duality in the plan of the committee. But the committee saw before them a fact, an existing evil, and they provided for that existing evil a remedy. When the functions of that commission shall close, the plan of the committee remains with a single court, a court which is a unit. I believe that whatever form of organization this Convention may think proper to adopt for the court of appeals, even if it should adopt the plan of the gentleman from Ulster [Mr. Cooke], it would still be deemed wise to establish a commission to dispose of the existing cases which have been accumulating so long. That measure of justice is due to the people of the State, and due to the suitors in that court. There are a large number of suitors who have been waiting from year to year for justice, and it is due to them that these causes should be decided at the earliest practicable moment. In my opinion, and it was also the opinion of the committee, it would be eminently unwise to constitute a new court, in whatever form, essentially broken down at its commencement by an overloaded calendar, which it must take up. These were the motives which actuated the committee in constituting a commission to dispose of the existing arrearages of the business before the court.

Mr. A. J. PARKER—It was stated by the gentleman from Rensselaer [Mr. M. I. Townsend] that he thought some other motive governed the committee than that which was avowed. They fixed upon seven as the number of judges in the court of appeals; and he more than insinuated that he thought it was the object of the committee to exclude from the court the present members of the court of appeals. Now, I am sure that he does very great injustice to every member of that committee. I am quite confident that there is no desire on the part of any member of the committee to exclude from that court any of the present judges of the court. In all the Constitutions that

have been adopted in this State, the practice has been to organize *de novo*, irrespective of the terms of persons then holding office. In this case, the committee recommended the same course that was taken by the Convention of 1846 in regard to the supreme court. They retained the old supreme court as a commission to sit and decide the cases then pending; and they retained the judges then in office for the purpose of the discharge of that duty. So far from any hostility being evinced toward the members of the present court of appeals, they are expressly provided for here. They are allowed to remain in office, to retain their places in what is virtually the present court of appeals, viz., in the commission of appeals; and that is to last three years. They, with one more to be appointed by the Executive, constitute that commission; and if vacancies occur, they also are to be filled by the Executive. But he may say that some of these judges may prefer to go upon the new court of appeals. Very well; that is open to them. We give them a double chance. While holding their places as commissioners of appeals in the old court, they may also be candidates for seats in the new court of appeals, and may, and probably will, if they desire it, be elected to that place. So that there are two chances before them, such as exist for no other persons in the State who may desire that office. For myself, I entertain great respect and regard for these judges, and desire they may be retained in either court they may prefer. The recommendation of the committee is in accordance with the precedent set in framing the Constitution of 1846, and all the previously adopted Constitutions of this State. So much for that. Now, a few words in regard to some suggestions made by other members of the committee. The gentleman from Ulster [Mr. Cooke] asks if the only improvement we are to expect from the court of seven judges is that to be derived from the permanent character of the court. I must say in regard to that, that although I believe, and think that the committee believed, that this court of seven, when thus permanently constituted, with a permanent tenure, either for life or for fourteen years, will be abundantly competent to discharge the duties of the office and keep the calendar clear, yet I believe it is contemplated by them, and trust it will be by members of this Convention, that there should be legislation upon the subject, which we all believe can do very much toward accomplishing the end we have in view. Certain it is that our present judges are inadequately paid. I think we must all agree upon that subject. They are not properly compensated, with reference to the labor that devolves upon them. The judges of the court of appeals are called upon to come here four times a year, and hold four sessions a year; and they return to their homes generally after having been here two weeks. I believe a great deal more public business would be discharged if more terms were held and more time were devoted to consultations. I believe if the judges were properly paid, so that they could afford to stay here, or to live here, to spend more time here in consultation as well as in the hearing of cases, they could perform a great deal more labor in clearing the calendar than they do now. But that subject

belongs to legislation. It does not devolve upon us to fix their compensation. We may well hope that the Legislature will do that with reference to the great amount of labor that will devolve upon them. There are other particulars in which I think great improvement might be made in the proceedings of that court. It has long been the practice to assign two judges to write opinions in each case, and after those opinions have been written, and after the judges have been separated for nearly three months, they come back here just before the next term to spend two or three days in consultation to hear those opinions read, and to vote upon each case and to decide it. This is a matter which belongs perhaps more properly to the rules of the court than even to the Legislature. Certain it is that it does not devolve upon us to regulate their mode of procedure. But I have no doubt that with proper compensation, so as to enable them to stay here, they would adopt the practice of the supreme court of the United States at Washington, to engage, immediately after the hearing of the argument, in consultation, and to determine the case, and then to appoint one of their number to write out the opinion; and I believe that would enable them to dispose of a great many more causes than it is possible to do under the present system. But they cannot well do that now, because they are so badly compensated that they cannot afford to remain here.

Mr. COOKE—Does the gentleman propose to fix their compensation?

Mr. A. J. PARKER—I have already stated that I suppose their compensation is not a question before us. We must leave that to the Legislature, and we may hope they will enlarge the compensation and make it adequate. I do not think it will be expedient for us to meddle with that. I speak of this as a subject discussed in committee, and one which I think we should take into consideration here in judging of the capacity of the system proposed. We should go as far as we can properly. We should frame the court, declare how many judges shall compose it, their tenure of offices, and the mode of filling vacancies. That devolves upon us. We should declare how many shall constitute a quorum and how many may decide; and all these things are provided for in the amendment I proposed. Although my amendment differs from the plan proposed by the Judiciary Committee, yet I hope it may be received with favor by this Convention, because I believe it to be the best system that has been proposed. I certainly should object to the system proposed by my friend from Ulster [Mr. Cooke] for reasons that I have stated heretofore and need not repeat. I believe that seven is as large a number as should be made to constitute the court; and I am opposed entirely to any court that shall be so large that it may be divided into sections, making virtually two courts. As to the commission, it has been already stated that that is temporary. It is only to clear off the old business. But my friend says the fifth section provides for another commission to be established by the Legislature ten years hence. I, for one, am entirely willing to strike out that section, and will vote to do so if I can get the opportunity. I do

not believe it is a necessity at all. I believe in the propriety of a commission now to dispose of the cases now pending, to dispose of the thousand cases upon the calendar which ought not to go upon the calendar of the new court to embarrass them, and to leave the new court to start even with the business of the State. But I do not believe there will be any necessity ten years hence for another such commission. I believe that the new court, with such compensation as the Legislature will give them, and with such a change in their system as they will no doubt adopt, will be abundantly able to dispose of all the new cases that will go upon the calendar. I believe this can be done and should be done, without limiting the right of appeal; and here I must dissent from the remarks of my friend from Onondaga [Mr. Comstock], and agree with the gentleman from Rensselaer [Mr. M. I. Townsend]. I do not believe in the propriety of limiting the right of appeal. I believe that the doors of the temple of justice should be thrown wide open to all, to the humble as well as the powerful, to the poor as well as the rich, to those who litigate for small amounts as well as to those who litigate for large sums, because the principles of law in each case are equally important; and it is equally, I think, the right of all parties in seeking redress to go through all the courts and to be heard by the highest tribunal. I believe it to be our duty to provide courts that can hear all the cases the people are disposed to bring before them. It will be our fault if that is not done. It was said by the gentleman from Rensselaer [Mr. M. I. Townsend] that the business of the State had accumulated fivefold within the last twenty years. My friend is certainly widely mistaken in that respect, for if he will look at the statistics upon our tables he will see that the number of appeals taken in 1848 was 268, while the appeals in 1855 were only 317, and in 1866 only 387. So far from the number having quintupled, as he supposes, they have hardly increased twenty per cent in all that lapse of time.

MR. M. I. TOWNSEND—I spoke of the business interests of the State, and not of the appeals to the court of appeals. I was not confining myself to the court of appeals, but to the business interests and the questions that must rise out of those business interests.

MR. A. J. PARKER—The extent of the business interests of the State is entirely foreign to the question we are discussing, except so far as tends to crowd the calendar of the court of appeals. It is the court of appeals that we are discussing, and its capacity, and what should be provided to meet the public wants. I find that the increased demand upon the court of appeals, in these sixteen or seventeen years, to have been about twenty per cent instead of five hundred per cent as the gentleman supposed. I trust, therefore, that this amendment will be voted down, and that we shall adhere to the number of seven judges, and that we shall make the court a unit, with the single temporary exception of this commission. I believe we shall be able to find no better system than that, and that it will be abundantly able to accomplish all that the wants of the people of the State shall demand.

MR. MURPHY—I should like to make an observation or two, which I am induced to do by the remarks which have fallen from the gentleman from Albany [Mr. A. J. Parker], in regard to appeals; but, in the first place, I would observe that, looking to the origin of this Convention, and the probable result of its labors, this subject is the most important one that we have yet considered or are to consider. It cannot be doubted that there was a wide-spread desire that there should be some reform in our judiciary system, and that it contributed mainly to bring about this Convention; and, if I may judge from recent indications, the result of the present labors of this Convention, will be fruitless except as to the judicial article. It is important, therefore, that we should wisely determine upon our judiciary system. There were two difficulties in our present system having reference to the court of appeals. I do not intend to elaborate them, because they have already been presented to the Convention by gentlemen who have spoken upon the subject. One was the want of unity in the court of appeals. It was the universal complaint that the introduction of members of the supreme court into that court, had a tendency to break in upon the uniformity of decision which should exist in the court of last resort. I believe in preserving the unity of that court as far as possible. Although I concur in many remarks that have fallen from the gentleman from Ulster [Mr. Cooke] I cannot give my assent to his proposition that this court shall be so constituted that it may be divided into two sections. Nor do I think there is any necessity for it. That leads me to the consideration of the other evil which existed in regard to this court, and that is the amount of business which it accumulated and which was not disposed of by the judges, leaving suitors with their causes undetermined, as I know from my own experience, four or five years. Something had to be done for the relief of the court. I do not believe in the topical remedies for this evil proposed by the committee and by the gentleman from Albany [Mr. A. J. Parker], of appointing commissions for the purpose of disposing of that business. We must go to the root of the evil, which, in my mind, is the allowing of appeals to the extent and in the manner in which they are authorized by the laws. Gentlemen contend that the right of appeal is sacred; that it should be extended to all cases, to the poor as well as to the rich, for small amounts as well as for large amounts. Grant it; I will not dispute that principle. I will admit that in small cases great questions may be involved, requiring elucidation by the courts of the State. But I hold that when this State shall have provided an honest and competent tribunal for the trial and review of a case, it has done its duty to the litigant, and he has no right to ask any thing more of it. Justice is fully subverted when that tribunal, in its different forms, has rendered its determination of his case. But it may be for the general interest of the whole State that certain questions should be further reviewed by a supreme tribunal, and that we should have a court of appeals for the review of such cases. I would have the cases that are to be so determined, not selected by the amount

involved, but by the certificate of the judges who heard and determined the case in the tribunal of first instance; that a review of the case by the court of appeals was proper and desirable, or in some other way determining the importance of the question. I would, therefore, restrict the power of appeal in the way I have indicated. I understand the article which has been presented by the committee to leave that question to the Legislature, and I am satisfied that it should be so left. I shall, therefore, vote against the amendment of the gentleman from Ulster [Mr. Cooke], and I shall vote, when the question may come up, against having a commission at the end of ten years.

The question was then put upon the amendment offered by Mr. Cooke, and it was declared lost.

The question recurred upon the amendment offered by Mr. Smith, as amended on motion of Mr. A. J. Parker and on motion of Mr. Prindle.

Mr. HALE suggested that the date should read "the 1st of January next."

Mr. RUMSEY—I introduced an amendment to this section, providing for the continuance of the present judges of the court of appeals until the expiration of their terms. I propose to insist upon that amendment, and have a vote taken upon it before we shall have finished our discussion of this question. But, in my judgment, this is not exactly the proper place for it, and I therefore withdraw that amendment.

The CHAIRMAN—The Chair will state that the reason it did not announce that amendment as pending was that it had already been considered this morning and postponed until the other sections should have been acted upon.

Mr. RUMSEY—I was not aware of that. Then I do not withdraw the amendment.

Mr. FERRY—It was my impression, and the impression of other gentlemen, that that amendment was adopted in committee week before last.

The CHAIRMAN—It was not adopted in committee, but was twice postponed.

The hour of two o'clock having arrived, the PRESIDENT resumed the chair, and the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock P. M.

The PRESIDENT announced the special order, being the consideration of the report of the Committee on the Finances of the State, the pending question being upon the amendment offered by Mr. S. Townsend.

Mr. S. TOWNSEND—Before a vote is taken I should like to withdraw my amendment and substitute another one. I hoped that we should proceed with the subject we had under consideration in Committee of the Whole this morning; and if in accordance with the sense of the Convention, I should prefer that we continue the debate on the report of the Committee on the Judiciary of the State. It was an instructive debate, and in order that we may continue it, I will move that the further consideration of the special order be postponed until to-morrow morning, to be made the first business in the morning.

Mr. ALVORD—A very large number of delegates are present, and I hope this report will not be delayed to go on with that discussion.

The question was put on the motion to postpone the special order, and it was declared lost.

Mr. S. TOWNSEND withdrew his amendment, and in lieu thereof offered the following:

"Personal property represented by the capitals of all incorporated or associated railroad, plank-road, turnpike-road, bridge, manufacturing, banking, insurance, trust and all other business companies, with full or partial corporate powers; also the special capital of all limited partnerships, together with any surplus of such corporations, associations, companies or partnerships, including the outstanding debts of the same that virtually represent capital, shall be liable to taxation for general State purposes, and none other, to an extent not exceeding three per cent in any one year. All other personal property shall be exempt from taxation. The Comptroller, Treasurer, Secretary of State and Attorney-General shall constitute a board to secure the equitable assessment and economical collection of the taxation herein imposed."

Mr. S. TOWNSEND—I hoped that the Convention would consent to delay action upon this report in order that the gentleman from Schuyler [Mr. Magee] might be present. It is a subject to which he has paid much attention, and upon which he has several times addressed the Convention. I would say, in addition to what I had the honor to observe in the Convention the other day, that in the little attention I have devoted to the subject of the investigation of the immense number of these incorporations, without bringing in the limited partnerships of the State, which are largely located in the city of New York, I have been struck with astonishment. I was at the county clerk's office in New York yesterday, and attempted to obtain some information as to their number and amount: but the county clerk informed me that it would take at least sixty days to look over the files and give a correct statement of their number and amount. Of course, if this principle is adopted, it will be the duty of the board created by this section to make a thorough investigation as to the active operations of the quasi-corporations of this character in the various counties. The information can be had by applying to the different county clerks. I find, however, from the records of 1866, gathered mainly from the Manual, vol. 2, which we have before us; that since 1847 there have been 352 companies incorporated for plank-roads alone, with a declared capital of \$6,720,000. In the same period there were nineteen companies formed for turnpike-roads, with the insignificant capital of \$123,000. Of gas companies there have been 139 companies, with a declared capital of \$38,472,500. Of other incorporations formed since 1848, consisting of mining, mechanical, chemical, which I suppose involves the petroleum mania, there were the astonishing number of 4,781, the amount of whose capital reached the still more astonishing sum of \$2,647,941,513. Of State banks, coming down again within the compass of reasonable figures, I find it stated that there were 57 in the interior of the State

with a capital of \$5,713,000, and in New York city there were 12, with a capital of \$9,292,500. There were 30 individual banks with a capital of \$437,567. Of national banks, which are now absorbing all others, out of New York city there were 260, with a capital of \$40,733,241, and in New York city there were 58, with a capital of \$75,009,700. The question of the taxation of these institutions is, of course, somewhat in abeyance at this moment, but I have no doubt that the final decision will be that as they enjoy our protection in the State, they are at least liable to some sort of taxation in the State. Of savings banks, there were 86 in all, of which 27 were in New York city; the excess of assets was \$9,865,441; while there were \$132,000,000 of deposits, and half a million of depositors. Any attempt to reach those deposits I suppose would be like an investigation into personal matters, but they ought to be returned under the proposition to make an accounting under oath; for on that principle every man and every woman must return the last dollar and the last cent. There are \$132,000,000 in the savings banks, a glorious amount saved from the reward of industry. Then of the joint stock fire insurance companies there were 117, with a capital of \$29,149,660, and of mutual fire insurance companies there were 15, with a capital of \$2,242,440. Of marine mutual companies there were 10, with a capital of \$20,273,337. Of life insurance companies there were 26, with a capital of only \$3,485,000, and yet the assets of those life insurance companies amounted to \$47,500,000. The aggregate number of these corporations was 5,989, and the amount of their capital was \$2,839,458,899. There are upon the comptroller's books some ninety gas companies, with a capital of \$16,176,067. Of railroad companies—an important matter with which some of us are familiar—there were 120, with a capital of \$115,633,678. The bonded debt is not returned, nor did I find the amount. From the cursory examination I was able to make, they are taxed only upon \$3,717,508 personal property, and upon \$30,541,028 real estate. Of miscellaneous corporations, consisting of navigation, manufacturing, express companies, etc., I have been obliged to estimate the number at 500, and the amount at \$25,000,000; making the total number 6,699, and the aggregate sum of \$3,046,063,644! And this, the Convention will please to remember, is entirely independent of any estimate for limited partnerships, or special partnerships, whose capital is declared under this article to remain intact, and not to be drawn upon during the prescribed existence of the firm. I do not know how large a sum these would amount to; but there are sometimes \$400,000 or \$500,000 invested in a special partnership; indeed, there are individual associations whose special capitals nearly approach one million of dollars.

Mr. DUGANNE—Do I understand the gentleman to say that three thousand millions of dollars of personal property were untaxed?

Mr. S. TOWNSEND—No, sir, not by any means. I mean to convey the idea that there are recorded since the year 1848, many of them speculative, in a great degree, these various associations and institutions, which enjoy the privileges

of corporations in perpetuity or for a term of years, and exemption in part or entirely from personal liability, amounting to the sum of three thousand millions of dollars. The entire amount of personal property returned as taxable, last year, was but \$334,826,220. I stated this to show the absurdity of supposing, for a moment, that our present laws scarcely reach this matter at all. Only three hundred and thirty-five millions out of these three thousand millions reaches the tax book.

Mr. DUGANNE—My question was whether these three thousand millions were the aggregate for twenty years.

Mr. S. TOWNSEND—It had been going on for twenty years.

Mr. DUGANNE—And it had been exempt from taxation?

Mr. S. TOWNSEND—Not by law, but practically it had been. In order to show the degree with which our statute books must be filled with this class of propositions and projective enterprises, I will state that from 1849 to 1866 the number of railroad corporations which were skeletonized, if I may use such a term, was 244, with a projected length of seven thousand miles, and a capital of \$237,000,000. The actual returned capital is only about \$115,000,000, less than one-third of the proper amount of those corporations now actually operating in this State, not \$35,000,000 of which is taxed. And there were seventy-three telegraph companies, with \$88,000,000 of capital placed upon the books of the State in the same period. With these figures, with these facts, it is an obvious inference that there is almost a perfect and complete escape of personal property from taxation in this State under existing laws. And necessarily, when the matter of taxation is pressed upon us in a form and to a degree we have never before known in this State, with little likelihood of its being soon relieved, they lead to the conviction, as we saw happily illustrated in the discussion of the judiciary system upon this floor this morning, that those, however limited they may be in number, who have had experience in these matters, and whose tastes and habits have led them to those investigations, should join together—for there is no question of party in it; it is a grand problem of political economy and of the science of government—and endeavor by suggestions, by argument, by parliamentary discourse, which I understand as an easy, unrestrained communication of ideas—

The gentleman's time having expired, the gavel fell.

The question was put on the substitute offered by Mr. S. Townsend, and it was declared lost.

The question recurred on the adoption of the amendment offered by Mr. A. F. Allen.

Mr. E. BROOKS called for a division of the question, the first branch to extend to the words "not exempt by law."

Mr. ALVORD moved to strike out the first branch of the amendment as divided, and to insert:

"All property, both real and personal in this State, shall be alike subject to taxation, which shall be equal and uniform upon all descriptions of property not exempt by law."

Mr. ALVORD—The simple reason why I move

this amendment is that there may not in any way be a construction of the section in favor of remitting a taxation upon either one of these two species of property. The difficulty in the phraseology, it strikes me, is that it leaves it to the disposition of the Legislature to pass laws by means of which they can tax the real estate and leave out the personal estate, or by which they can tax the personal estate and leave out the real estate. The object I have in view is to require that they shall tax both real and personal property, to avoid any effort on the part of the Legislature to excuse the one while it taxes the other. It may be that I am rather too particular in this matter, but it strikes me that we cannot be too careful when we see the disposition on the part of some members of this Convention to bring forward the outrageous idea of the exemption of personal property from taxation. To-day there is no sort of doubt in the mind of any man who will reflect for a single instant, that the amount of personal property in the State of New York vastly exceeds that of the realty, and the operation of the taxation, particularly in the rural districts of this State, is that it is bringing upon the real estate the entire of the taxation: so that, sooner or later, unless we pause and stop in the course we are pursuing with this subject we shall strike at the very foundation of society; because when you shall make the laws such as to render it incumbent upon the real estate alone to pay your taxes, the result will be the enhancement of the price of every thing grown upon the real estate for the sustenance of man, which must act with extreme rigor upon, and almost reduce to servitude, the great mass of the laboring population of the country; and the curse of our system in the past has been, that its tendency has been in that direction, and not in the direction of equality of taxation. There was once a time, now long gone by, when the property of the State was almost entirely real property, when there was very little personal property in the State; when even within the limits of the boasted State of New York, the personal property came from abroad, or belonged to other parties than the men who were engaged in business within the limits of the State. And so far as regarded the people in the interior, a mortgage was almost the necessary attendant upon the ownership of real estate, and there was no personal property. But that time has gone by. There are but few mortgages upon the farms of the people of this State. There is comparatively little indebtedness in our interior villages and cities, many are rolling in wealth. I took occasion to state the other day, that there were in the State of New York insurances to the amount of a thousand millions upon perishable personal property in the State, besides what was *in transitu*. I have the pleasure to-day of repeating that statement, with an increase of the figures. David A. Wells, known to all of you as an employee of the revenue department in Washington, and one of the best statisticians on this continent, has gone into a thorough and elaborate examination of this matter, so far as regards the State of New York; and he declares in an article which has lately come from his pen, that over

\$1,600,000,000 of personal perishable property in the city of New York, owned by the people of the State of New York, and not *in transitu*, is now under insurance. No man within the sound of my voice believes that over twenty-five per cent of the personal property in the State of New York is under insurance to-day. Yet we have only \$1,600,000,000 as the returned value of the property, both real and personal, and less than \$400,000,000 for the personal property; showing that even of the personal property actually under insurance, \$1,200,000,000 escapes taxation, supposing the uninsured property entirely to escape. I will repeat that a correct and true valuation of the aggregate of the real and personal property, which should be put upon our assessment rolls, and subjected to taxation, would not be less than \$10,000,000,000 instead of \$1,600,000. The amount of moneys embraced by the capitals of your various companies, your banking companies, insurance corporations, railroad corporations, gas corporations, and divers and sundry other corporations that only respond in personalty, is to-day over \$5,000,000,000 in the State of New York; and here we sit down with the assessed value upon our assessment rolls expressed by the assessors, upon the whole personal property, of \$400,000,000. I trust that there will be something done in this Constitutional Convention that shall right this wrong upon the people of the State. I have heard it repeated here over and over again, by some gentlemen, that this is no place to do it; that we should go to the Legislature. I have stood up in the Legislature of the State for the past ten years to fight upon this very subject, and I have been invariably answered on each and every occasion when this has come up, that there is no time in the Legislature to do it, but that we must wait and have it done in the organic law of the State; that we must wait until we could get a Constitutional Convention to do it. I tell you that this is the place to put down the foundation on which we shall proceed to put an end to this gross violation of the rights of the people of the State, and especially upon that portion of our people who pay the taxes in the country. I trust that whether my amendment, to carry out this idea of making all property liable, shall prevail or not, the idea of the amendment proposed by the gentleman from Chautauqua [Mr. A. F. Allen], will be embodied in and made a part of the constitutional law of this State.

Mr. RATHBUN—I simply wish to call the attention of the Convention to the proposition of the gentleman from Chautauqua [Mr. A. F. Allen] because it occurred to me the gentleman from Onondaga [Mr. Alvord] was mistaken in his idea that the Legislature had no power to distinguish between taxation upon real and personal property. I think a reading of the proposition will show that it announces the doctrine that the taxation upon the real estate and personal property in the State of New York, liable to taxation, shall be uniform and equal. You cannot under it exclude or protect one or the other; they must be taxed alike. I prefer that to the amendment offered by the gentleman from Onondaga [Mr. Alvord.]

Mr. WAKEMAN—I hope we shall vote on this subject understandingly. If I understand the propositions of the gentlemen they mean this: that you can tax the real and personal property to which every man is entitled, regardless of whether or not he owes for any portion of it. The result of such a course will be that taxation will be entirely unequal in a majority of cases. I agree with the gentleman that the real and personal property of the State should be taxed, but I insist a man should not be taxed for that he does not own. They say that if a man purchases a farm and gives a mortgage for three thousand five hundred dollars for a portion of it, the true rule is to tax the entire property; then he will pay on what he has and what he owes. Sir, such a system of taxation would ruin a majority of the hard working young men who start in this country. This measure will tax his credit, as I had the honor to show the other day; it proposes to tax him for his good character. Let personal property bear its proper share of the taxes together with real estate. I do not wish it to pass into the organic law of the State that the Legislature in no case can deduct what an individual may owe. It will operate unjustly and harshly upon the middle class of men, who are the bone and sinew of the country.

Mr. RATHBUN—Will the gentleman allow me to ask him a question?

Mr. WAKEMAN—Certainly.

Mr. RATHBUN—Does the gentleman propose to make any distinction between exemptions upon real estate and personal property?

Mr. WAKEMAN—I would not.

Mr. RATHBUN—That answers the whole theory.

Mr. WAKEMAN—The point is this: Make them exactly equal as they are under the present statute, and let a man, if he owes on his farm, deduct the amount of his indebtedness.

Mr. RATHBUN—That is what I mean; that is the proposition.

Mr. WAKEMAN—As I understand both the amendments, they are these: All property owned or in possession of a person shall be taxed equally. I understand the gentleman from Chautauqua [Mr. Allen] to be tenacious of his amendment in this, that we shall not deduct any indebtedness whatever. The gentleman from Onondaga [Mr. Alvord] proposes the same thing; the gentleman from Cayuga [Mr. Rathbun] proposes the same thing; the gentleman on my right [Mr. M. I. Townsend] proposes the same thing. All of them are insisting on that point all the while.

Mr. M. I. TOWNSEND—Is not my friend from Genesee [Mr. Wakeman] mistaken? I never held that a man should pay taxes upon property for which he is indebted.

Mr. WAKEMAN—The other day I illustrated the fact that a man could have in his possession eight thousand dollars' worth of property, while worth only two thousand dollars. Yet he would pay taxes on six thousand dollars, over and above the amount he is worth.

Mr. HAND—I would inquire whether this amendment does not propose to tax property whether a man owes for it or not?

The PRESIDENT—The amendment will be read for the information of the Convention.

The SECRETARY read the amendment of Mr. Alvord.

Mr. HAND—That proposition does not contain the idea that the property in a man's control, whether he owes for it or not, should be taxed. I hope that will be included, and that we shall not exempt property from taxation because a man owes for it. I had the honor to reply to the argument of the gentleman when it was made some time ago in Committee of the Whole. A man owns a farm worth five thousand dollars; he owes three thousand dollars; shall the farm escape taxation to that amount? It is not a man's credit nor his honor nor his good name nor the man himself that is taxed; but it is the property he holds; the property which is protected by your laws, by the machinery of government, by the courts, for which expenses are incurred. That property, wherever the tax gatherer can find it, should be taxed to pay for the expense of its protection. A man has in his possession fifty thousand dollars' worth of goods; he owes for these goods a man in Philadelphia; his creditor lives beyond the jurisdiction of our courts. That property is found by the assessor and justly taxed. I have yet to hear a good reason why it should not be, for our laws have, by their machinery, at great expense perhaps, protected that property. The man is protected in the possession of the property, with all the interests pertaining to it, and the property is taxed—not the man. The exempting from taxation of a man's indebtedness is a great source of fraud by which men evade the assessor and get rid of taxes they ought to pay. Let us tax property wherever it is found.

Mr. WAKEMAN—Would you tax a mortgage in the hands of a man in Pennsylvania?

Mr. HAND—I would tax the farm.

Mr. WAKEMAN—That is the thing.

Mr. HAND—I would tax the farm where I found it. The question of the man's indebtedness incurred in the purchase of that farm should not arise in the premises. That farm is a part of the territory of the State of New York. If a man purchases it, he knows whether he can afford to pay the incidental expenses on that property, including taxes.

Mr. GRAVES—Is not the farm worth to him just as much less as is the amount of the debt or mortgage?

Mr. HAND—We have nothing to do with him; we have to do with the property which our laws protect, and that property is to help support the burdens of the government. The man has nothing to do with it. We do not recognize him; we recognize the value of his possession. When the man comes in possession of the property, he knows its liabilities and its incidental expenses. In the whole discussion of this question the great fallacy on the other side is that a man is a subject of taxation. Nothing is more fallacious. We have nothing to do with him as an individual. The assessor does not deal with the man, he deals with the property which is protected by expensive machinery of government, and the expense is borne by the citizen in proportion to the amount of property that may be in his pos-

session. The individual has no connection with the case, except as the responsible guardian of property, and he is not a subject of taxation unless it be a poll-tax. He is out of the record. It is the property on which the assessor can lay his hand. The fact of his taxation and the amount of it depend entirely upon the fact and amount of property in his possession.

Mr. HARDENBURGH—While I entirely agree with the gentleman [Mr. Hand] in the result he seeks to obtain, I differ wholly from him in the basis of taxation he proposes. I think we make a great mistake when we say the government taxes the property in any sense of the term whatever. Property never appears upon the records; it is the person who appears. My theory of taxation is simply this: the person, in all instances, being the subject of the crown—of the government, and being protected by it in his life, liberty and the enjoyment of his property is the subject of taxation.

Mr. HAND—Will the gentleman allow me? Opposite the name of this person is entered a sum of money, and that sum is the amount for which he is responsible, depending entirely on the amount of his property.

Mr. HARDENBURGH—I shall answer the gentleman, as I proceed. This subject of the crown is protected, I repeat, in the enjoyment of his life, his liberty and his property. But, as my friend has well stated, it costs the government money to create and maintain machinery to protect this property and the person of the holder. How does the tax gatherer collect from the citizens of the State? The one subject of the government should pay more toward its support than another. Why? Because he enjoys more of the protection of the government. How will the government make the distinction? The government speaking to its subjects says: how shall we distinguish? The distinction is made by apportioning the taxes to the quantity of property in the possession of the subject. It is for that purpose alone that property is resorted to. So that in our government every man pays taxes in one form or another. A man who is stripped of all property pays a tax by way of military duty. A man worth ten thousand dollars pays twice the amount of taxes paid by a man worth five thousand dollars. The amount of a man's property measures the quantum of his taxes.

Mr. HAND—Will the gentleman allow me? I would ask him if he would tax the property of non-residents?

Mr. HARDENBURGH—I would tax the property of a non-resident here.

Mr. HAND—He has no protection.

Mr. HARDENBURGH—His property is protected here. Now, let us see if there is any injustice in the principle announced by the gentleman from Chautauqua [Mr. A. F. Allen]. If this matter is left to the Legislature I think I can demonstrate to any sensible mind there will be no fear that the Legislature will exempt debts hereafter, and allow the owner of real or personal estate to swear off his debts, because the wheels of government would stop in about eighteen months. If real as well as personal estate owners were to swear off their debts, I think it would be difficult

to collect a sufficient sum of money to pay the running expenses of the government. I believe we all agree that the real estate owner and the personal estate owner should be placed upon a basis of equality. You must allow the real estate owner to swear off the debt he owes, or, otherwise, you must not allow the personal estate owner to swear off the debt he owes. I think it is quite a clear proposition that there is no injustice in taxing a man who is in debt for every dollar with which he is trafficking. A merchant has five thousand dollars' worth of goods in his store. He has bought them of me and given me his note in payment for the full amount. I put the note in my safe and he puts the goods in his store and commences to trade and traffic. Now, the crown—the government, has to protect him in that trade, in that traffic; it throws around him the shield of its protection by the machinery of the courts; it furnishes him with the protection of police; the doors of the courts of justice are open, and he may collect all his debts. The expense to the government is the same whether he owes for the goods or whether he does not. The government comes to me; I hold the shadow of these goods—the mere representative of them. Must I not pay? I answer: the goods this paper represents you have taxed already; that is sufficient. But the government throws around me also the protection of its machinery. It protects me in the enjoyment of this note against robbers and thieves, and opens the doors of justice that I may enter and collect the obligation. I, therefore, should pay a tax likewise, and that tax must be measured by the amount of my representative property. I agree with all here that this is one of the most important questions we have before us. And I entirely agree with the gentleman from Onondaga, [Mr. Alvord], that if we drift much further in the direction in which we have been going for the last quarter of a century, we will compel either repudiation or complete revolution in the government. I believe more than two-thirds of the personal property of this country escapes taxation. If you go to a merchant in New York you will find he owes a merchant in Havre, or Hamburg, or Brussels. Here is a vast amount of property to be protected, and it is protected by the laws of this State. I say it is wrong that such property should not be taxed. I think three-fourths of the expenses of this State government are caused by the protection that is necessary for personal property. And yet this very class of property which requires this enormous expenditure of money almost wholly escapes taxation—two-thirds of it at least. Now if you thus drive taxation upon the real estate of the country; it is quite certain the farmer must of necessity add to the products of his land, the additional sum which is to reimburse him. That sum is to be paid by the consumer. So it is the laboring arm of the country that finally has to pay. Now, I say this is wrong. I am wholly satisfied with the original proposition of the gentleman of Chautauqua [Mr. A. F. Allen], or the amendment offered by the gentleman from Onondaga [Mr. Alvord]. I have no doubt that if either proposition is carried out taxation would be

more uniform and equal. If the representatives of property, notes and mortgages, were taxed over, the aggregate would be enormous, and the ratio of taxation would be, I think, reduced more than half.

Mr. BARKER—The proposition that has been introduced by Mr. Allen involves two propositions, as I understand it. The first is that every class of property, both real and personal, shall be exposed to equal taxation. The second is to enforce the discovery of both classes of property, or rather to compel the discovery of all the personal property in the State, and the taxation of real estate according to its actual value. It seems to me there has been no subject introduced in this Convention that should require more scrutiny or upon which people have greater interest. In this State all revenues are derived from direct taxation. The history of this State for the last twenty years, upon the subject of taxation, has been one that has caused great comment. I would not impugn the motives of any gentleman in the vote he may give, but when he rises on this floor as an advocate of the exemption of personal property I think it will be found that he is actuated by personal interest. It seems to me that it is a part of a just scheme of finance that this rule should be adopted. I am somewhat surprised that the learned Committee on Finances should not have considered this proposition and reported a section with their views upon it. In every section of the State, in village, in country, personal property is rapidly increasing. Real estate is increasing in its value; in certain localities it is increasing in the same ratio as personal property in the country. Therefore I insist on having it put upon the assessment roll according to its actual value. In the cities and villages, and around business centers, a small piece of property has an intrinsic and actual value equal to a large farm. It should be put on the tax-roll, and there be properly and equitably assessed, without any diminution. Now, to quote the apprehension of my friend from Genesee [Mr. Wakeman], that a man may be compelled to pay taxes upon property which he does not truly own, but which he holds as trustee for his creditor, I would state to him that the Legislature has ample power to give him an exemption equal to his indebtedness. And this exemption may be extended to real estate or to personal property, as the wisdom of the Legislature may direct. I hope the section will remain; that the amendment of the gentleman from Onondaga [Mr. Alvord] will be voted down, for I think the language of the section is clear and more comprehensive than the language of the proposed amendment.

Mr. BELL—It has been evident to my mind for some months that this Convention was unwilling to lay down any correct system of assessment and taxation. There seems to be an antagonism between the various interests that are here represented. Those owning large amounts of personal property seem to fear that by a correct system of taxation they will be obliged to pay more taxes on their personal property. Those owning largely in real estate are fearful that by some process of this kind their assessment and taxation may be increased. Now, inasmuch as it may be impos-

sible to establish a definite system of taxation, in the Constitution, yet, it seems to me that we are in duty bound to lay down some general principles to guide the Legislature in framing a system of assessment and taxation for the State. The amendment of the gentleman from Chautauqua [Mr. A. F. Allen] is clear and simple, and in the right direction. Its adoption will effect a revision of our assessment laws. It simply assumes that taxation in this State on personal estate and real property shall be equal and uniform. It does not enter into the question whether there shall be a deduction on personal property for indebtedness, or whether there shall be a deduction on real estate for liens in the shape of mortgages. It leaves that whole matter to the Legislature, with this general and uniform rule, that if they make abatement on one species of property, they will be bound to make an abatement of every other species of property. I need not enter into the discussion of this matter at length. It has been fully and clearly shown by the gentleman from Broome [Mr. Hand], by the gentleman from Ulster [Mr. Cooke], and by the gentleman from Chautauqua [Mr. Barker] who last spoke, that this principle is clearly right, and unless some principle of this kind be adopted, we are in danger of worse results. It occurs to me, sir, that no member of this Convention can ignore this subject with the pressure that is upon us. As has been well said by the gentleman from Onondaga [Mr. Alvord], and he has had a great deal of experience in this subject, we cannot fully discharge our duty in this Convention, and submit a Constitution to the people for their adoption, without incorporating in it some general principles on the subject of assessment and taxation. The people will feel that we have neglected at least one very important duty. It occurs to me that we cannot do less than adopt the amendment under consideration. It is the simplest thing we can do, and at the same time it lays the basis of the system which may be elaborated and carried out to the full extent by future legislation. In my view of the case, the amendment offered by the gentleman from Onondaga [Mr. Alvord] seeks to accomplish precisely the same results as that offered by the gentleman from Chautauqua. I prefer the phraseology of the amendment offered by the gentleman from Chautauqua, as it is clear and explicit, and a little more simple.

Mr. SPENCER—I am opposed both to the amendment of the gentleman from Onondaga [Mr. Alvord] and the proposition of the gentleman from Chautauqua [Mr. Allen], on the ground that it will be impossible for this Convention to adopt any theory or any principle of taxation, which shall be suited to all the circumstances and all the contingencies which may arise in the progress of the business, and the development of the resources of the State. But I am opposed to it for another reason; that it is entirely unnecessary. These propositions, if I understand them correctly, contain nothing more than what is already embraced in the statutes of the State. I do not mean by this, that the statutes have provided the best means by which these principles can be carried out, but I do say, that if I under-

stand correctly the propositions which have been presented here, they embody nothing more than is already contained in the statutes of the State.

Mr. BELL—Will the gentleman allow me to interrupt him a moment?

Mr. SPENCER—Yes, sir.

Mr. BELL—Do the statutes require that personal property and real estate shall be assessed equally?

Mr. SPENCER—The statute provides, in so many words, for a uniform rule of taxation, in relation to both real and personal property. I will read the provision:

"All real and personal estate liable to taxation, shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor."

Now, if that proposition—

Mr. BELL—Will the gentleman allow me to make a further remark?

Mr. SPENCER—Yes, sir.

Mr. BELL—Do not the same statutes provide for the valuation of personal property, and that real estate shall be assessed at its full value as if for the payment of a debt of a solvent debtor?

Mr. SPENCER—I will answer the gentleman directly. I was about to say that if this proposition which I have read from the statutes does not embrace a uniform rule of taxation, I do not know how it can be expressed by language. Now, I will come to the gentleman's question in regard to the deduction of debts in the assessment of personal property. The proposition of the gentleman from Chautauqua [Mr. Allen], if I understand it correctly, excepts from the operation of the principle such property as may be exempted by law from taxation. Now, what is exempted by law from taxation? An amount of property, under the statute to which the gentleman refers, equivalent to the debts that the individual owes at the time; so that if the principle embodied in the proposition of the gentleman from Chautauqua, be carried out, the Legislature will still be authorized under the rule presented there, to continue or to re-adopt the very principle in regard to taxation which is now embraced in the statute.

Mr. BELL—Will the gentleman permit me to make a suggestion?

Mr. SPENCER—Yes sir.

Mr. BELL—Would not the Legislature be obliged to exempt an equal amount of real estate?

Mr. SPENCER—No, sir.

Mr. BELL—Then it would not be an equal and uniform assessment and taxation on real estate and personal property.

Mr. SPENCER—The proposition provides "An equal and uniform rate of taxation except as to such property as may be exempted by law;" and by law an amount of personal property is made exempt equal to the amount of debts which the individual owes. Now, there is another feature of the gentleman's proposition which he thinks will secure taxation on all personal property in this State, in the provision which calls for a sworn statement of the amount of property which an individual may have. Why, Mr. President, the statute has already provided an in-

stitution far more thorough and efficient than that which might be adopted under the provision which he professes to incorporate into the Constitution. The assessor is authorized to estimate each individual's personal property at such an amount as he may judge it to be worth, and if the individual deems himself to be assessed too high, his remedy is to make an application to the board of assessors to reduce the amount, and upon such application the assessor is authorized to put him under oath and to examine him in regard to every single item of his personal property, and in regard to every debt that he owes, so that if the law is faithfully carried out in that particular, if the assessors do their duty in the assessment of personal property the law is amply sufficient to secure the assessment of every item of taxable property in the State. These and other features which are embodied in the proposition of the gentleman from Chautauqua, are, as will be seen by an examination of the statute, already embodied therein as principles upon which all kinds of property are to be assessed in this State. As I said before, I do not think they are the most efficient that can be devised for securing a thorough and perfect assessment of all descriptions of property, but they are such as we have, and under the proposition of the gentleman from Chautauqua [Mr. A. F. Allen], it is to be submitted to the Legislature to provide all the details and means by which an efficient taxation is to be secured, and the Legislature may, in their wisdom, fall back upon the system which now exists, instead of providing a better one, or they may, without any constitutional provision, study the systems of other countries and of other States, and if they shall have sufficient wisdom and sufficient industry, provide some more thorough, more efficient, and perhaps more just and equal mode of taxation.

Mr. OPDYKE—From the tone of the discussion upon this subject this evening, I am apprehensive that the Convention is about to commit a grave error on the subject of taxation. If I correctly apprehend the proposition now before the Convention it directs the Legislature to provide for the uniform taxation of all personal property, real and personal, owned by each individual, or in his possession. Then it authorizes the Legislature to make abatements of such property as it sees fit to exempt. Now, sir, as I read this proposition, it will compel the assessment of all the property exempted, and the exemption will not apply to debts, because they are not property; consequently it will not permit the Legislature to allow deductions for indebtedness. If I am right in this interpretation of the proposition, it takes the ground of that proposed by the gentleman from Chautauqua [Mr. A. F. Allen] in Committee of the Whole, that indebtedness should not be deducted. Assuming this to be the meaning and intent of the proposition, I will say a few words in regard to it, without a full repetition of the objections which I urged at that time, to the proposition to tax property without permitting those in possession of it to deduct their indebtedness. I will, however, repeat a few of the illustrations that I then gave, of the working of such a plan. I declared then, and I declare now, that if

adopted, it will destroy the commerce of this State. I spoke before of its effect upon the banks of this State. I gave an illustration of a bank with a capital of two millions of dollars, and with securities on hand to the amount of twenty millions. Now, under this rule you will assess that bank upon the whole twenty millions of dollars, not allowing it to deduct the eighteen millions of indebtedness. That will be thirty per cent on the capital of the bank for each year, and therefore you tax the entire profits of the bank at the rate of twenty per cent each year. I gave an illustration of the working of this system upon commission merchants, taking a house with a capital of less than half a million of dollars doing a business of eight millions a year, receiving goods, issuing their acceptances payable in four months after date, and selling goods on four and six months' credit, with an amount of business on hand averaging perhaps four millions, and an amount of indebtedness even more than that, and an amount of goods on hand of perhaps a million of dollars. You will see by this plan you tax that house on four millions of dollars, and upon a million dollars' worth of merchandise on hand, making five millions of dollars, while their entire capital is less than half a million. Thus you will tax them tenfold, thirty per cent upon their entire capital. Now, will the commerce of the State stand such taxation? Will it not rather seek adjoining States? One of the incidents of commerce is credit. Credit is grounded upon the necessity of those holding more capital than they can profitably employ themselves, loaning it to those who can employ it profitably.

MR. CHURCH—Will the gentleman yield a moment?

MR. OPDYKE—Certainly, sir.

MR. CHURCH—I would like to ask the gentleman whether, in the case of a bank such as he describes, those deposits ought not to be taxed, either to the bank or to the depositors themselves; and in the case of the commission merchant, whether the property in his possession ought not to be made to contribute to the support of the government—ought not to be taxed either to the person holding it or to the person who placed it there?

MR. OPDYKE—I will answer the gentleman with pleasure. In my judgment, what we should endeavor to do is to have taxation uniform upon all property in the State, whether real or personal, to tax it once and to tax it once only. That is what I call equality and justice. Now let us apply that rule to the cases which the gentleman has brought forward. These parties to whom the bank is indebted consist of depositors and the holders of their circulating notes, which are scattered throughout the United States. When the assessor comes to these depositors and asks them for a sworn statement of their property, that embraces the deposits then at the bank. There that property is taxed, but your system would tax it again in the bank. Now, it is safe to say that in the city of New York to-day, there is at least five thousand millions of reciprocal indebtedness; that is to say, cases where one citizen of that city is indebted to another citizen of that city. I suppose the aggregate indebtedness of the city of

New York to be ten thousand millions, and I suppose that half of that—five thousand millions—would be a low estimate for the reciprocal indebtedness of the citizens of New York and others doing business there. That is not property; it is simply indebtedness, and if you tax it you tax commerce and enterprise and credit, not property. This taxation of *choses in action* of all classes of securities, without permitting any exemption, is a tax upon commerce and credit. Now, if you wish to destroy the commerce of the State, and not only the commerce, but every other branch of industry, of which credit is the life blood, you can devise no more efficient plan of doing it than this. I believe that this method of taxation without allowing the deduction of indebtedness would increase the assessment roll in the city of New York to an excess beyond the amount of property that actually exists there of ten thousand millions of dollars. It is scarcely necessary to illustrate the effect that this would have on the commerce of our State. Beyond a doubt it would drive it into other States, and as I have already stated, if you wish to destroy the commercial supremacy of this State, and drive the commerce away into other States, you can devise no other plan so certain to effect that object. Credit is one of the incidents of commerce. There is scarcely a commercial transaction but what is attended by credit in some form or degree. Commerce could not exist without it; and if you adopt this proposition you will do all in your power to destroy it. I approve entirely of the principle embodied in this proposition, so far as it requires sworn statements. I have said before more than once, that that, in my judgment, is the only effective way of bringing out all the property. The gentleman from Steuben [Mr. Spencer] has given us the existing statutes on the subject. They are very good, but still they are defective, and the great defect is this: the assessors estimate, according to the best of their knowledge, the value of the real and personal property, but through want of knowledge, or through caprice, or sometimes through favoritism, they assess personal property too low. Of course, the party assessed makes no objection and so he escapes with less than his due share of taxation; but sometimes his assessment is put too high; then he comes forward for the purpose of swearing it down. Now, in my judgment, the best way to get rid of this difficulty is to require a sworn statement. The returns of income, under the internal revenue law are given under that condition, and it has produced very satisfactory results. As I said before, I do not believe that property holders are liable or likely to swear falsely in any considerable degree. I think the United States government gets very nearly all the revenue that it is entitled to from the income tax. Now, Mr. President, if it be in order I propose an amendment.

THE PRESIDENT—There are two amendments already pending.

MR. ALVORD—I desire to withdraw the amendment which I offered, and to offer another in its stead. I want to insert in the sixth line after the word "person" the words "association or corporation," and to add the same words at the end

of the section. My reason for this is that as it stands at present, there might be some question whether it would reach associations or corporations, and as we use in other connections the words "individuals, associations or corporations," it seems to me proper that the same provision should be made here. I desire to make a few remarks in answer to the gentleman from Steuben [Mr. Spencer,] and also in answer to the gentleman from New York [Mr. Opdyke]. I am very much astonished indeed that a gentleman coming from the rural portions of this State where they are particularly interested in an equality of taxation, should undertake to argue here that there should not be the same equality of taxation in reference to real estate that there is in reference to personal property. In the one case the party owning real estate and owing to the entire extent of the value of that real estate, is under the necessity of paying taxation upon it to the last dollar.

Mr. SPENCER—If the gentleman will allow me, I will say that he must have misunderstood me, for I did not so argue.

Mr. ALVORD—I so understood the result of the argument of the gentleman. It leaves it to the tender mercies of the Legislature to do away with this great inequality between real estate on one hand and personal property on the other. Another thing, the gentleman from Steuben [Mr. Spencer] undertakes to argue that the object will be obtained by putting into the provision the words "except such property as is exempted by law." Now, what is exempted by law under the statute which he undertakes to quote here? Not the personal property of a man sufficient to represent the amount of the person's indebtedness; that is simply an abatement, not an exemption. Churches, school-houses, poor-houses and such property—property that belongs to the public in their corporate capacity of towns, counties or States—these are the things that are exempted; but this other is simply an abatement upon the personal property to the extent of the owner's indebtedness. That is all there is in that; and it cannot be tortured by the Legislature into the idea that they have a right under it to exempt indebtedness on personal property, and leave indebtedness on real estate to go unexempted. In one case there is an abatement; in the other an absolute exemption; and there can be no controversy in construing or applying that provision of the law. The proposition of the gentleman from Chautauqua is upon the ground that there shall be equality of taxation upon these two kinds of property; that all the property of the State that is liable to taxation shall stand upon the same basis. That is clear and indisputable, and no Legislature can hereafter, following that constitutional provision, undertake to exempt or abate in any way indebtedness so far as it regards personal property, without they do the same thing for real estate. I do not see how my friend came to be carried away by the idea given forth by the gentleman from New York, that there is here a virtual command to the Legislature, provided this Constitution shall be adopted by the people, that they shall not abate indebtedness from property. There is no such command, that is left entirely

to the Legislature. The only command is that taxation upon property shall be equal and uniform; and if they say that there shall be no liability of a party to taxation for his indebtedness, we merely provide that that shall inure to the benefit of the real estate owner as well as to the benefit of the individual who holds personal property. The provision takes away no right of the Legislature in that regard. It leaves it for the Legislature, in their judgment and wisdom, to do as they see fit about it. I agree with other gentlemen who have spoken here, that it is one of the great outrages of the time that we undertake to exempt any property from taxation or to make any abatement for indebtedness. It ought all to be taxed, because it is all taken care of, supported and maintained by the government. I wish to answer my friend from New York [Mr. Opdyke] in reference to the cases of the banks, which he says would be taxed thirty per cent under this provision. I ask him to answer whether or no he believes that under a strict system of assessment of all the property within the limits of this State it will not come up to ten thousand millions of dollars as against its present amount; and then whether, even if you do assess bank in the way he suggests, they will have to pay as much taxation as they now do? The gentleman does not suppose that the amount of taxation to be raised by the government of this State is going to increase in proportion to the increase of assessed property in this State, provided we can get at the right method of assessment? If we can get at such a method of assessment the rate of taxation will be vastly less than it is now, and where they pay now two per cent in any given locality the same amount of money can be raised, at the rate of one or two mills, under a system which will tax all the property of the State. Under such a system, while there are many men who do not now pay one-half or one-third as much as they would then, there are others who will pay even less than they now do. It is a uniform, equal and thorough system of taxation that we are aiming at. It does not make any difference to me whether my property is assessed at one thousand or one hundred thousand, provided my neighbor is assessed in the same proportion, but it is to put men upon the same standing in this regard that we desire to make this provision. Now, the gentleman from Steuben [Mr. Spencer] has said that the present law is abundantly sufficient. I ask him to point me to a single board of assessment anywhere in this State who begin to live anywhere near to the requirement of that law. They cannot do it. It is an impossibility for them to do it. They can only estimate the value of the property arbitrarily, putting it as high as they please, and then leave it to the individuals themselves to come forward and modify it; but rather than subject themselves to that mode of correcting their assessments they go through the State, putting property down to the lowest possible point that their consciences will permit (in order that they may not be worried by the importunities of parties to reduce taxation), which they are generally obliged to do upon the representations of the parties, since their own estimate is but an arbitrary guess. There-

is no other way to remedy this difficulty than to do as has already been done by over thirty of the independent States and Territories of this Union, and compel the parties to come forward and give a sworn statement of their property, a statement not only of the property itself, but of its actual cash value. Then let the Legislature place around the operation of this provision such penalties and regulations as shall secure its thorough enforcement. The gentleman from New York has spoken too of the commission merchants. I have always understood, and I understand now, that a commission merchant is not the owner of the property in which he deals. That property belongs to some other party or parties, and the merchant takes it and sells it, and it may be guarantees the sales for a certain commission thereon; the property, however, belongs to the individuals sending it to him for sale, and the commission merchant is only the agent. Now, I say, let that commission merchant's customers pay the tax. The property is protected under our laws and certainly it should be taxed. So with the depositors in the banks, let them pay the tax upon the deposits that they place there. They should pay it. It is their property; and in addition to the safeguards that are thrown around it by the State they have State laws creating and regulating the bank which protects their money, so that they are doubly bound to pay these taxes. If the tax should come in the first instance out of the bank, it can easily be transferred to the property holder who owns the deposits. And so in regard to the commission merchant, he may pay the tax in the first instance and afterward collect it from his customers. I believe, sir, that the time is coming when the people of this State will be educated up to the idea of taxing all property in this State irrespective of its ownership; but inasmuch as there does not seem to be sufficient public opinion in favor of that idea, to carry it out now, we should take the next best step in that direction that we can and make the taxation upon property in this State equal, and see to it that all property belonging to the people of this State shall be taxed upon their sworn statements in regard to its value. Another thing; under the present system our laws operate in divers and sundry ways, differently so far as regards this question of offsetting indebtedness against personal property, in an onerous degree. There are ten thousand subterfuges by which men get rid of taxation upon personal property. In the villages along the line of the canal, the State deposits the tolls there collected in the local bank or banks, and a dozen or more men sign the bond of the bank, guaranteeing the safe custody and payment of the money into the State treasury, and often the entire board of directors of that bank, come forward and sign a bond, forty, fifty, or sixty thousand dollars that the bank shall take care of that property and pay it over, and then each of them goes before the assessor and states that he has a liability resting upon his shoulders in the bond that he has given, and therefore that he is to be free from taxation to that extent. Or here is a man who is indisputably good in the commercial sense, and his neighbor comes forward very willingly and indorses his paper, without a possible shadow of an idea of

ever being called upon to pay it; still, when the assessor comes around, this man says to him, "I am liable for so much upon commercial paper, which must be deducted from my personal property; put me down, therefore, so much less." I know a case, in my own city, where an individual was in the habit, just before the assessor came around, of getting together his bonds and mortgages and taking them down to the city of New York and buying stocks at thirty days, and handing over those bonds and mortgages as mere form and subterfuge, without written assignment, as security for payment of the stocks, and then coming home and saying that he had involved himself in the city of New York for the purchase of stock to a large extent, and had pledged these bonds and mortgages as security, and that he must, therefore, escape taxation to that extent. That man died worth a million of dollars, yet he never was on the tax roll of the city of Syracuse for over ten thousand dollars, and there never was a time when he had not from three to five hundred thousand dollars of personal property which was not taxed at all. Such a state of things as this, if it is not brought to an end, will result sooner or later in the overturn of this government—if we do not go to work and do what we can to make the burdens which rest so heavily upon the backs of the people more equal in their distribution.

Mr. AXTELL—I move the previous question.

The question was put on the motion of Mr. Axtell, and it was declared lost.

Mr. E. BROOKS—I have been a good deal instructed and amused by the character of the discussion which has taken place this evening. There is an intimation upon the one hand—the gentleman making it disavowing any reflection upon any member of the Convention—that those who vote in a certain way upon the pending proposition are liable to the inference that personal interests prompt them to take the position which they do upon this question. There is also an intimation from my friend from Jefferson [Mr. Bell] that there is an indisposition to meet this subject and a desire to avoid voting upon it. Sir, for one, I share no such feeling, and I do not believe that any member of this Convention does. For myself, I express the hope that we shall get rid of this article before we separate to-night. I do not believe in the justice or propriety of these intimations which come thick and fast from various seats of this chamber, in regard to taxation and exemptions from taxation. Why, sir, as I listened to the debate a moment or two since, I was reminded of two resolutions which I first heard from the lips of John Quincy Adams, and which originated, I believe, in the Old Bay State, in the early history of that commonwealth, and which read: "Resolved, That the earth and the fullness thereof belongs to the saints. Resolved, That we are the saints." [Laughter.] Now I presume that we, as members of this Convention, have the same infirmities and the same patriotism as the constituents whom we represent; and when the gentleman from New York [Mr. Opydye] presents this question in its commercial aspect, in my judgment he places it as a representative of the great commercial emporium of the country, just as it ought to be submitted. I think this sub-

jeet should be considered in its twofold aspect of taxation and property, and as a commercial question. I desire to say that the gentleman from Onondaga [Mr. Alvord] is, in my judgment, entirely in error when he predicts that, at some future time, if we are not wiser in the future than we have been in the past, there may be a revolution in this State, growing out of the want of uniformity in our system of taxation, and this because of the pressure upon real estate. Sir, in my judgment, the real estate of New York is not taxed, either in the rural districts or in the commercial sea-board, unduly, and there is abundant evidence of this fact. Almost every man who owns a store in New York, even in these dull times, and every man who owns real estate, whether in the shape of a warehouse, a commission store, a store for the sale of goods, or even a dwelling-house, receives as a rule an enormous interest upon the value of his property, whatever it may have cost him; there is no other property in this State or out of it, as a rule, which is as remunerative as this is. Ten, fifteen, thirty and forty per cent is often paid by the occupants of stores and dwellings in New York city and elsewhere, and therefore this class of property is not unduly taxed. There are also dwelling-houses in New York to-day which pay six, seven, nine and ten thousand dollars a year, and the occupants and owners of such houses pay but a small portion of the tax which properly belongs to this property. This is the state of affairs in New York, and the same is relatively true in the interior of the State, certainly in almost every large town, commercial in its character, where any important amount of business is transacted; and the same, in my judgment, is true also of the farms to which allusion has been made here. During the last five years, there has been no business more prosperous than the farming interest of the State and the whole country; the evidence of this fact is the admission of the gentleman himself [Mr. Alvord], that during the four or five years past, the markets for all farms have been abundant, prices high, and the farmers are left comparatively exempt from debt. There is no class of interests in the State more prosperous to-day than the farming interests; and I do not think that this kind of property is unduly taxed. Now, a word in reply to my friend from Broome [Mr. Hand]. He says that wherever he finds a piece of property he is disposed to put a tax upon it at once. He reminds me, sir, of that famous Irishman who was so fond of a scrimmage that his rule was, wherever he found a head to hit it. [Laughter.] Upon the same principle, wherever the gentleman finds a piece of property, no matter whether mortgaged or not, no matter what indebtedness may rest upon it, he is disposed to put a tax upon it at once. Sir, this is extremely unjust. We should tax what men own, not what men owe. We ought not to put a tax upon the credit of the State, nor the credit of the country; and it is in this commercial aspect that the question has a very important bearing. This view of the question is presented by my friend from New York [Mr. Opyke] as an important one to the members of this Convention who represent the sea-board. I hope it will be considered in this light by the

Convention; and it is mainly to direct attention to this aspect of the case that I make these remarks. In regard to personal property, Mr. President, we all know that its value is very variable. Ninety days or so ago a man in New York city might have owned personal property worth at that time one hundred thousand dollars, but during these ninety or one hundred days the reduction in the value of that property has been from thirty to forty per cent, so that a man may buy to-day in New York woollen goods nearly as cheap as he could seven years ago, and cotton fabrics quite as cheap as he could before the civil war commenced. Sir, it is obviously just that a question of so much importance as this, and one which changes its aspect with every phase of the market, should be left rather to the Legislature of the State than to a Convention which is making a law to stand for twenty years.

Mr. DUGANNE—The apprehension has been expressed upon this floor that as two interests were represented here we could come to no conclusion, which would be harmonious, in regard to the assessment of personal property and real estate. Sir, for many years I have regarded this distinction in taxation made between personal and real estate, as the most mischievous feature of our financial legislation. I deny that the point raised to-night in regard to double payment upon property is a valid argument at all. What is meant by property? What do we seek in property? What do we amass or hold in property? We hold it, sir, for its usufruct; for what we can get from it. Taking that view of the subject it is right for the State to assess property wherever it can be found. If it be found in real estate, it is possessed by some one, and that some one holds it for its interest or usufruct. If it be in the shape of personal property it is held for the same end. If I buy a farm and give my note in payment, and a mortgage as security, I hold the farm, I possess the farm, I derive a profit and usufruct from the farm, and it is for this ownership and this property that the State holds me liable to taxation. The man who holds my note holds also thereby a property which is represented by that note, drawing its interest and obtaining its usufruct for the holder's gain. Therefore there are created two absolutely distinct species of property, and both should be taxed. The gentleman from New York [Mr. Opyke] speaks of the reciprocal indebtedness of the city of New York, and he says that it amounts to five thousand millions of dollars. What does that reciprocal indebtedness or exchange of liability involve? Do not notes of hand represent value? Do they not earn their interest? If they do why should not this reciprocal indebtedness be taxed wherever it is found?

Mr. E. BROOKS—Will the gentleman permit me to interrupt him?

Mr. DUGANNE—Yes, sir.

Mr. E. BROOKS—Take for instance a bank check. It belongs to somebody. It one sense it is property, and in one sense it is in the character of a note. It often passes from hand to hand. Checks for ten thousand dollars may control transactions amounting to a hundred thousand dollars or more, passing into the hands of A, and

B, and C, in succession. Now there can be but one tax imposed properly upon this check, and yet it seems to me that my friend would impose a tax upon every man who might have it in his possession.

Mr. DUGANNE—A bank check represents a certain value to the man who holds it and calculates to use it for a certain interest or profit. If he gives it to you it becomes your property and is of value or profit to you, if it be a valid check, and, therefore, it is, or ought to be, liable to taxation, in whatever hands it may be at the period of assessment. You may say that the goods in a commission store are not absolutely valuable, because they are not sold. But they ought to be sold. Government does not take cognizance of a man's good or bad fortune, nor is it bound to ask whether he sells his goods or not. Government finds what a man has to sell, the property that he holds, for profit thereon, and demands that he shall pay taxes upon it. The commission merchant holds and sells another's goods. His indebtedness may be to creditors across the Atlantic. We know very well that one of the largest firms in New York, which has done business to the amount of ninety millions of dollars has returned fifty cents only for personal assessment, because its indebtedness, all owed abroad, covered the value of goods consigned to it. Now, will you contend that this firm, holding in its possession five million dollars' worth of goods, should not be taxed for a dollar, because, forsooth, it owes money to creditors across the sea? Wherever property is found, and in whatever form, whether as real estate or personal property, whether in bonds, notes, obligations or mortgages, it must represent some value and some interest, otherwise it is good for nothing, and it is no property. If it be property, it should be taxed under our laws. All property must be taxed, or there is no equal taxation. You may exempt, for good and valid reasons, a certain amount of property, but you cannot exempt one property and not another for the same valid reason. Now, sir, I am well aware that there are thousands and millions of dollars' worth of property untaxed, and as the law is administered, untaxable in New York city. I am well aware that our system of taxation is a gigantic fraud in the great commercial city of New York, and that many of our largest property holders know that every year, in the strict eye of the law, they are actually in complicity with fraud on the part of assessors and collectors in that city. I do not know how it is outside of the metropolis, but I am quite sure that such a condition of things exists in the city of New York. Sir, I have heard that the real estate interest has its champions upon this floor, and that the personal property interest has its champions here, and that each interest demands certain exemptions. I would to heaven that the real tax payers of this State, and of all States, had some champions here, and that the labor of the country, which is ultimately answerable for all our taxes, might have some means here adopted—some provision placed in our Constitution, by which it could be protected as adequately as the great commercial interests which gentlemen tell about, and which live and

thrive only by labor and upon labor, are always and absolutely defended. If this be not done, the apprehension of the gentleman from Onondaga [Mr. Alvord], that at some not far distant time, the present state of things will lead to a revolution, may not be entirely groundless. When he uttered that conjecture he was rebuked for it; but I would go further even than he does; for I believe, sir, that we, in our generation, or some of us, will live to see that revolution, because such revolution, peaceful or otherwise, is imminent and inevitable. In this age men are educated; the masses become intelligent and thoughtful, and when they vote they know they are sovereign, and can make the laws of taxation as well as other laws. By and by, sir, therefore, unless we, in our wisdom, adopt some timely means by which taxation can be equalized, these men, these voting masses, will demand that the great body of the working people shall be exempted from taxation, and that all taxation shall be levied *pro rata* upon incomes above a certain amount, so that the earnings of laboring men below that limit shall wholly escape taxation. Rapidly is this knowledge, which is power, becoming familiar to our people. It may not yet be commonly discussed in American trade-unions, but I know it is discussed weekly and daily in the French and German papers published in our country. The thought is taking deep root among thinking voters, and at some time, not far distant perhaps, unless we take measures to equalize the burdens of our people, we shall see all taxation based upon incomes above a certain amount, and all incomes below that amount totally exempted from taxation, and this by the votes of the sovereign masses, when they shall learn their own interest, and wield their own power.

Mr. WAKEMAN—Mr. President, I have been interested in this debate, but I fail to see this question in the same light with other gentlemen, who, I may say, are on the other side of the question. What has been the theory heretofore in reference to the taxation of real estate? It makes no difference whether a farm belongs to A or B, to a resident or to a non-resident, it is always taxed; and if I go to buy a farm belonging to a non-resident, the theory has always been that I should pay the tax upon it; in other words that the farm itself should be liable to taxation always, and if it is owned by a non-resident, the land is still liable for the taxes and must pay them if the owner does not do so. Now, why not apply the same rule to personal property? If a man has possession of personal property, the rule is obvious. Personal property enters into all the affairs of the country, and when you undertake to tax that, you reach every door sill, you reach the men referred to by the gentleman from New York [Mr. Duganne]—poor men. Why is it that woolen and cotton goods are now low? It is because there are labor and competition in the country, which brings them down. Now, suppose we adopt a system of taxation which will drive out one-half of our manufactures, and the men who deal in those goods. Why, it will bring home the change to the fireside of every individual, rich and poor, in the State. It will bring it home particu-

larly to the poor man. He is the man who pays the largest taxes. Take your four corners, for instance, where there are two stores, and I ask you if it is not for the benefit of the neighborhood there that there should be competition between mechanics, merchants and others? What is the result of competition? It is that it brings all the commodities of life so low that the poor man is decidedly benefited by it, while no man suffers by it. Suppose you adopt a system of taxation which drives out or destroys that competition. The result is that while a man may have to pay less taxes in one way, he yet pays a great deal more in another way upon every pound of tea or sugar, or any thing else that he buys, and thus you make a barrier between the rich and the poor man, which the latter can hardly ever pass. Every gentleman who has advocated this amendment has advocated it on the basis that there should be no deduction whatever made in consequence of indebtedness. That is the ground they put it on, every one of them. My system would be to tax the property of the country. As the law has been, if I buy a farm with the knowledge that I have got to pay a tax upon it, it is right that I should be taxed for that farm, though I might owe for it; but take the man now that has bought his farm and owes in consequence of it, under the present system of taxation, the result would be that you drive such a man from business entirely; and you would tax, as has been said here, the commerce of the country instead of taxing the property of the country. Much has been said about protecting property by police regulations. I would like to know, sir, what the duty of a government is—what we enter into society for unless we are to receive some protection from the government. I would like to know whether or not we do not surrender up certain rights to the government, for which we are to have in return certain guarantees from the government to protect ourselves, our lives and our property. Gentlemen say, because I happen to hold property in my possession that I am taking care of for somebody else, I should be taxed for it because it is protected. I take it that, having that property in my possession, if I am an honest, a fair dealer, that property will benefit the community around me rather than do them an injury. While that property is protected by the police regulation of the State it protects the people around about me, where it raises a competition by which they get their goods cheaper than they otherwise would. This question should be looked upon in all its bearings and from all points. Do not let us adopt any measure here by which the Legislature can in no wise change for the next twenty years, the laws relating to taxation. I would be willing, as I said before, that all property should be liable to taxation, that is the actual property of the country—real or personal; but the system advocated by the gentlemen on the other side does not place it upon that basis at all, in my judgment. They say because personal property is not properly taxed now therefore we will tax a man for what he has in his possession, whether he owns it or not. That is not taxing property. It is said that a merchant may owe a man living in another

State, and therefore although the property is put up for sale here it is not liable to taxation. What do you propose to do? Do you propose to drive foreign capital from this State? If a man trusts any merchant of New York that goes abroad, do you propose to drive him from the market entirely? No, you do not propose to do that exactly, because you do not propose to tax the man that sells the goods but the man that has them in his possession—drive him from the market. The result substantially would be to drive both—not only the man who is perhaps selling the goods on commission or on credit, with a small amount of capital, but you would probably drive away foreign capital by this very operation. If we can adopt any system to accomplish it, the actual property of the country can be and should be taxed—I mean what a man owns absolutely—what he is worth. If a man is worth five thousand dollars tax him for it; if ten thousand tax him for that; if one hundred thousand tax him for that; and in ascertaining what he is worth look at his balance sheet and see how the matter stands. I am willing to unite with the gentlemen on one portion of their argument. They say, tax the property of the country, real and personal. Amen to that. But before they get through with the argument every one of them has said: "We do not propose to deduct one dollar. We propose to reach the property where we find it, whether in the hands of the owner or not." And therefore they destroy the commercial interests of the country and overturn the law we have on the subject of the rights of person and property, of bailors and bailees. And it seems to me that in trying to reach the personal property that is not taxed we should be careful that we do not inflict a greater injury upon the community, and that community is not confined to the rich at all. It will reach the poor, humble man in respect to the commodity he uses. Therefore I must say I distrust the whole scheme.

Mr. M. I. TOWNSEND—I would like to ask the gentleman a question. In the case of real estate, as well as personal, would the gentleman tax the balance sheet—tax the balance of what the man is worth?

Mr. WAKEMAN—In that point of view, if I were to start off as an original proposition, I would make a deduction in reference to that. The theory has been that all property located in a school-district, town, county or State shall be made liable. You reach the property whether it is owned by residents or non-residents. It is a great question. We should do no injustice now, because every man that has bought his farm has bought it with the full knowledge of all that. But the true system would be to tax a man for precisely what he is worth; and if he owns a farm that is worth five thousand dollars, with a mortgage upon it for two thousand, tax him for three thousand. But then you want to reach the other three thousand dollars in some way. If you can reach the man who holds the mortgage, very well; and oftentimes you do reach him. The man may be a neighbor, and he pays the tax on the three thousand dollar mortgage, and the other on the five thousand dollar farm, and thus there is a double taxation.

Mr. DUGANNE—If a house is sold to a man

in New York—a tenement house—and that man gets thirty per cent on it, and owes ten thousand out of the twenty, shall he be exempt upon that ten thousand when he is getting thirty per cent on the whole?

Mr. WAKKMAN—It is difficult to equalize taxation in that particular. Oftentimes a man rents a tenement, and he does not get any thing at all. That depends upon the value of the man's property. If that man's property will yield thirty per cent, allow the assessor to assess it according to what it is worth. If it is nominally put down at fifteen thousand dollars, and it yields a dividend of thirty per cent, make it thirty thousand, if necessary. Rate the property at what it is worth.

Mr. BERGEN—I have not risen, sir, for the purpose of saying much in relation to this question. I believe, if I understand the members correctly, we are all in favor of taxation of the property of the State, but not all in favor of taxing property twice; upon that we differ. I have listened to the arguments advanced *pro et con*. In my judgment the matter should be left to legislation, as it has heretofore been. But I rise mainly to defend the county that I represent. It has been said here by the gentleman from Onondaga [Mr. Alvord], and other gentlemen, that the system of taxation, or of valuation throughout their portion of the State, and throughout the whole State, was a system of fraud; and the gentleman from New York [Mr. Duganne] states freely that the whole taxation of New York is a fraud. It appears from the representations of these gentlemen that the assessors in their localities are in the habit of not doing their duty—not assessing the full value, or any thing like the full value of the property. I would say in behalf of the county that I represent, that if a man has personal property it is placed upon the assessment rolls and the assessors endeavor to get every dollar of the valuation. The gentleman from Onondaga [Mr. Alvord], in saying it is not so in other parts of the State, may be correct. In the county of Kings it is the habit of the assessors to place every dollar of the property upon the assessment rolls. That point is strained. Personal property is valued at more nearly its true value than real estate. It is a difficult matter to get at the value of real estate in the suburbs of a large city. The value fluctuates. I know that real estate on the average in the county that I represent is assessed in most cases for at least two-thirds of its value, and in many cases to its full value. In many portions of the State, if I am correctly informed—in the interior and western part of the State—it is not assessed for one-half, and in many instances not one-fourth its value. If the assessors neglect to perform their duty in other portions of the State, if the system is a fraud in those localities, it is not the fault of the law, for the law requires them to assess it at its full value. It is the fault of the men who administer the law.

Mr. DUGANNE—The gentleman says that in his own locality the assessment is two-thirds of the value of the real estate. Is not that a fraud?

Mr. BERGEN—No, sir.

Mr. DUGANNE—Is it not contrary to the statute?

Mr. BERGEN—No, sir. I will explain the reason why it is no fraud. It is a difficult matter to fix the valuation in the neighborhood of a large city. An individual may own a plot of real estate which he values at ten thousand dollars; sell it at auction, put it under the hammer under a foreclosure, and it may not bring over one-fourth of the amount, and he is lucky, indeed, if it bring one-half the amount. It is not so with a farm in the country, that has a more fixed value, and a more certain revenue. Real estate in the neighborhood of a large city like New York is a kind of fancy property, it has a fancy valuation. It is a difficult matter to get at its true value. The assessors rate about two-thirds of its fancy valuation, which is as near its proper and true valuation as can be arrived at. Now, I say if frauds are committed, if property in this State is not assessed at its true value, it is the fault of the men who administer the law. It is not the fault of the law. If any method can be devised that will compel the individuals—the assessors into whose hands the matter is placed, to perform their duty, it should be done, for they are the men who should be compelled to perform that duty. You may devise any system you please. If the men who administer that system are corrupt or neglect fully to perform their duty it will fail to give satisfaction, and will operate unequally and unjustly. For these reasons I would prefer leaving this matter with the Legislature, as has been proposed, and as has been done heretofore, for they can change it as the exigencies of the case may require.

Mr. RATHBUN—I wish to say a word in reply to the argument of the gentleman from Genesee [Mr. Wakeman]. I am a good deal surprised that he should object to a principle so obviously just in fact as the principle of equality. It is difficult for me to conceive how any one can stand up here and object to a rule which is proposed to operate equally upon all men; and yet the gentleman from Genesee [Mr. Wakeman] objects and protests that the personal property in the State of New York ought not to be taxed as real estate is taxed, because the man who buys the land buys it knowing that it is subject to taxation for its value at the time of purchase. The gentleman ought to know that there will be time enough for the people to find out after this Constitution is adopted, if it shall be, and as I hope it will be, if this principle goes into it, that the man who buys personal property will be liable to be taxed also, and then the personal property and the land will be precisely in the same condition. But he tells us that it will break up competition in trade, that merchants will go away and leave the State if they are required to pay any tax. Now, will that be a consolation for the poor men who are situated in the cities, and in the neighborhood of large mechanical establishments, to be told that all they have to do in order to buy goods cheap is to exempt the merchant from all tax? You pay the tax and then you get paid for it in the cheapness of the goods. Perhaps the gentleman can make the people in his neighborhood believe that, but he cannot in mine. They

know better. They know that an equal burden upon property is but just everywhere. The benefits are equal, and why should not the burdens be equal? The gentleman from Richmond [Mr. E. Brooks] has stated some objections. He tells us that the real estate is not unduly taxed. That may be, and I have no doubt in regard to the value that it is not reasonably or properly taxed for the reason that there is no standard; the statute is not followed at all. There is a mere arbitrary value fixed, and that is arranged by comparison, without reference to value—a total violation of the statute all over the State. If you tax real estate one-third, one-half, or two-thirds of its value, and tax a man who is honest and gives the full amount of his personal property, for all of that, you wrong that man, because you tax him upon the whole value of his personal property, while you tax his neighbor on one-third or one-half of the value of his real estate. The proposition here is to apportion the taxes equally. If the one should be taxed at half price, the other should also. The proposition declares that they shall be equally and uniformly taxed. If gentlemen here propose to demur and object to this rule, then we may as well abandon the idea of justice in taxation. They say, wait, and let the Legislature provide for taxation. The Legislature has been waited upon for forty years, and they have made no adequate provision to equalize the burden of taxation. We have waited long enough, and if we intend ever to have a system of taxation that shall be honest and just, we are bound now to lay down the fundamental doctrine upon which that tax shall be based, and that doctrine is equality. If we can establish that in the Constitution, we shall have established a foundation upon which the Legislature will be compelled to proceed and legislate for the carrying out of that doctrine of equality in reference to taxation. If they do that, then it is right, it is just, it is honest, and the people will acquiesce in it.

Mr. MERRILL—It seems to me this question ought to be very well understood by this time, and we ought to have a vote upon it before the house gets any thinner. I move the previous question.

The question was put on the motion of Mr. Merrill, and it was declared carried.

The PRESIDENT stated the question to be upon the first part of the proposition offered by Mr. A. F. Allen.

Mr. BARKER called for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The vote was taken upon the first branch of the amendment offered by Mr. A. F. Allen, as follows:

Ayes—Messrs. A. F. Allen, Alvord, Andrews, Archer, Axtell, Baker, Ballard, Barker, Barto, Beadle, Beals, Bell, Bickford, E. P. Brooks, E. A. Brown, Case, Cassidy, Cheritree, Church, Cooke, Corbett, Curtis, Duganne, C. C. Dwight, Eddy, Farnum, Ferry, Field, Fowler, Fuller, Fullerton, Graves, Hadley, Hale, Hammond, Hand, Hardenburgh, Harris, Hiscock, Hitchcock, Houston, Kinney, Landon, A. Lawrence, Lee, Ludington, Mer-

rill, Miller, Monell, Opdyke, Potter, President, Prindle, Rathbun, Reynolds, Root, Rumsey, Seaver, M. I. Townsend, S. Townsend, Van Cott, Wakeman, Wales, Wickham, Williams, Young—66.

Noes—Messrs. Bergen, E. Brooks, W. C. Brown, Clarke, Corning, Gould, Krum, Mattice, Merwin, Spencer—10.

The PRESIDENT—No quorum has voted. What is the pleasure of the Convention?

Mr. GOULD moved a call of the Convention.

Mr. KRUM moved that the Convention adjourn.

The question was put on the motion of Mr. Krum, and it was declared carried, on a division, by a vote of 44 to 31.

So the Convention adjourned.

WEDNESDAY, December 4, 1867.

The Convention met pursuant to adjournment.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. CHESEBRO—I ask the unanimous consent of the Convention to present a communication to the Chair.

No objection being made, the SECRETARY read the communication from George Francis Train, requesting to be informed if it would be agreeable for the Convention to allow him the use of the chamber at four o'clock P. M.

Mr. BALLARD—I move that the use of this chamber be granted to Mr. Train as requested.

Mr. C. C. DWIGHT—I move to lay the motion on the table.

The question was put on the motion of Mr. C. C. Dwight, and it was declared lost.

Mr. ALVORD—I am in favor of the motion of the gentleman from Cortland [Mr. Ballard], for the reason that, if we allow Mr. Train the use of the hall this afternoon, we will be more likely to have a quorum of the Convention this evening for the transaction of business.

The question was put on the motion of Mr. Ballard, and it was declared carried.

Mr. GOULD—I ask leave of absence for Mr. Merwin, of Jefferson, for Wednesday and Thursday.

No objection being made, leave was granted.

Mr. ALVORD—I desire to ask leave of absence for Mr. Magee, of Schuyler. He is detained from the Convention in consequence of ill health, and desires indefinite leave of absence.

No objection being made, leave was granted.

The Convention then resumed the consideration of the special order, being the report of the Committee on the Finances of the State, as amended in Committee of the Whole.

The Chair announced the pending question to be on the first part of the substitute proposed by Mr. A. F. Allen.

The SECRETARY read the substitute as follows:

“Taxation upon the real estate and the personal property in this State shall be equal and uniform upon all such property not exempt by law.”

The SECRETARY proceeded to call the roll on the first part of the substitute, the ayes

and noes having been ordered, and it was declared adopted by the following vote:

Ayes—Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Archer, Axtell, Baker, Ballard, Barker, Barto, Beadle, Beals, Beckwith, Bickford, Bowen, E. P. Brooks, E. A. Brown, Carpenter, Case, Cheritree, Chesebro, Church, Clarke, Cochran, Cooke, Corbett, Curtis, Duganne, C. C. Dwight, Eddy, Farnum, Ferry, Field, Fowler, Francis, Graves, Hadley, Hale, Hammond, Hand, Hardenburgh, Harris, Hatch, Hiscock, Hitchcock, Houston, Kinney, Landon, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Miller, Monell, Morris, Opdyke, Potter, President, Prindle, Rathbun, Reynolds, Root, Rumsey, Seaver, Silvester, Smith, Tappen, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Wakeman, Wales, Wickham, Young—77.

Noes—Messrs. Bergen, E. Brooks, Corning, Gould, Krum, Mattice, Murphy, Spencer, Stratton, Veeder—10.

The question recurred on the remainder of the substitute, which the SECRETARY read as follows:

And the Legislature shall require from every person in this State a sworn statement of the taxable property and actual value thereof, both real and personal, owned by, in the possession of, or under the control of such person.

The SECRETARY then proceeded to call the roll on the second proposition, the ayes and noes having been ordered, and it was declared adopted by the following vote:

Ayes—Messrs. A. F. Allen, N. M. Allen, Alvord, Archer, Armstrong, Ballard, Barker, Beadle, Beals, Bickford, Bowen, E. P. Brooks, Carpenter, Case, Chesebro, Church, Cochran, Corbett, Curtis, Duganne, C. C. Dwight, Farnum, Fowler, Francis, Graves, Hadley, Hammond, Hand, Hardenburgh, Harris, Hatch, Hiscock, Hitchcock, Houston, Kinney, Krum, Landon, A. Lawrence, M. H. Lawrence, Lee, McDonald, Merrill, Miller, Monell, Morris, President, Prindle, Rathbun, Reynolds, Root, Roy, Rumsey, Seaver, Smith, Tappen, M. I. Townsend, Van Campen, Van Cott, Wales, Young—60.

Noes—Messrs. Andrews, Axtell, Baker, Barto, Beckwith, Bergen, E. Brooks, E. A. Brown, W. C. Brown, Cheritree, Clarke, Cooke, Corning, Eddy, Ferry, Fuller, Gould, Hale, Lowrey, Ludington, Mattice, Murphy, Opdyke, Silvester, Spencer, Stratton, S. Townsend, Veeder, Wakeman, Wickham—30.

Mr. OPDYKE—I offer this amendment to the section just adopted.

The SECRETARY read the amendment as follows:

Add thereto the following: "After deducting therefrom any debts due or to become due from such persons."

Mr. OPDYKE—I feel that the section just adopted without the amendment I propose is a most mischievous one. I read it with great care last evening, and I arrived at the conclusion that a fair interpretation of the language of the section will not permit the Legislature to authorize the deduction of indebtedness. Most of the gentlemen who have advocated the amendment have regarded it in that light. Some, however, main-

tain, that the phrase authorizing the exemption of property will authorize the Legislature to exempt indebtedness. I feel that such is a violent interpretation of the language. By no stretch of the imagination can indebtedness be called property. The language of the section only authorizes such abatement as may arise from the exemption of property. Indebtedness, I repeat, is not property. Therefore, I hold that the Legislature will not under the article as we have adopted it, be authorized to deduct indebtedness. If that be so, I want to show the highly dangerous character of the article we have adopted. We shall then be able to see that it is very little better under the other interpretation. I may be permitted, in view of the importance of the subject, to repeat the impolicy, the danger of taxing the credits of business enterprises in this State. We all know that commerce is of paramount interest in this State; and if you tax reciprocal indebtedness you will inevitably suppress the prosperity of the commerce of the State; you will inevitably drive it to other States. I have shown that under this system, in ordinary branches of commercial business, you will tax parties on a sum ten, twenty, or thirty-fold the amount of their capital. Not being subject to taxation in other States they will, of course, remove their business to other States, for it will be utterly impossible for commerce to be prosecuted here with profit.

Mr. DUGANNE—Will the gentleman allow me to ask him a question? I merely wish to ask whether, if business is driven to another State, the market will also be driven there, or will not business go where the markets are?

Mr. OPDYKE—If there is any meaning in the question at all, if there is any distinction between business and markets, I say that the markets go with the business. It is the business that constitutes the markets. Of course they go together. I desire to say a few words in answer to my friend from Onondaga [Mr. Alvord], who has such a glowing estimate of the worth of this State. He has quoted a gentleman connected with the treasury department as the very highest authority on this subject, and has cited his evidence and the criticisms he made on the report of the Committee on Finance on this subject. I can only say that, if that production be a specimen of his acumen on financial questions, I cannot place so high an estimate upon his ability as my friend from Onondaga. In that production he endeavored to prove that the Finance Committee had overestimated the amount of the indebtedness and the amount of the taxation of this State, in both of which he utterly and completely failed; and I can demonstrate to any man of sense that his criticisms were unwarranted, and in other respects unfair. He charged the committee with assuming that the entire wealth of this State was the assessed value of the property in the State. The committee never made any such assumption, but expressly declared that they considered the value of the property more than its assessment. I give that as a specimen of the gentleman's financial ability, misrepresenting the sentiments expressed by the committee itself. Then, again, my friend from Onondaga has referred to the re-

marks on the amount of perishable property insured in this State. I noticed his remarks. I think he said sixteen hundred millions of dollars were under insurance. He did not say, although the truth required it, that that sum embraced the value of the buildings insured. I will venture the prediction that there is no such amount insured, although I have not looked at the statistics, outside of the value of the buildings in this State. I could demonstrate, if I had sufficient time, and if I would not weary the patience of this Convention, that the entire value of personal property in any given community can never exceed the value of the land itself including the buildings and other improvements upon it. It is an imperative, unswerving and natural law of trade that the value of land is exactly the counterpart of all the capital placed upon it. I assert that, as I have long ago asserted it, without fear of contradiction by any man who may undertake to demonstrate to the contrary. I do not know what the assessed value of the real estate of this State may be; but if it is true that it be a thousand millions, it embraces a great deal more than the value of the land. If it be assessed at only one half its value there are two thousand millions of real estate including the value of the improvements thereon. Whatever may be the net value of the land including city lots, farms, and every thing else, that I assert will measure the value of the productive property of this State. I desire to come to another distinction which seems to have been overlooked. There are two kinds of personal property. One is real, bona fide personal property, that which has real worth, that which it has taken human effort and machinery to produce, that which costs effort. That is real, bona fide personal property. The second kind is that which is the mere evidence of the existence of such property, such as notes, securities of all kinds, indebtedness—not property, but simply the evidence of property which exists somewhere else. I suppose a large estimate of the personal property of this State would be fifteen hundred millions of dollars. If we assume the value of real estate, including the improvements thereon at two thousand millions it will bring the entire wealth of the State to thirty-five hundred millions which is the property we desire to assess—to assess the whole of it once, and none of it twice. The amendment I propose will produce precisely that result. The article we have adopted requires a sworn statement of the actual cash value both of real and personal estate. Now, I propose to assess all that is either owned, or held, or in any manner in the possession of an individual. I propose to deduct the respective indebtedness of all persons assessed; and when you do that you get the entire wealth of each individual, whether in real or personal property. My amendment covers the real estate as well as the personal; that is to say, if a man owns a farm worth twenty thousand dollars, and it be mortgaged for ten thousand, he will pay taxes on ten thousand dollars, while the holder of the mortgage will pay taxes on the other ten thousand dollars. If we desire to insure the taxing of all the property in the State, and tax it but once, we must adopt the amendment I have proposed; otherwise we are

perfectly at sea, and will be taxing fiction. We may swell the amount of our assessment to twenty-fold what it ought to be. And what will be the consequence? A most inequitable, most uneven and unjust distribution of taxes. But, Mr. President, let me suppose that the gentlemen who maintain that the article as it stands will authorize the Legislature to make these abatements, or to authorize taxes, or authorize the tax payers to make these abatements—what then? We are turning over to the Legislature, under an article that scarcely any two members of this body interpret alike, an indefinite and uncertain power. And if it be a power at all, they may exercise it in perfect violation of every principle of equality and justice. Why not say to them: if you exercise this power at all it must be in a manner that will be equitable and that will treat all men alike, and not let one debtor escape taxation because he has property of a peculiar kind, nor another debtor escape taxation because he has property of a peculiar kind, but let the rule be absolute and uniform, so that all shall be treated alike. I hope this Convention will pause before they adopt any such article as this. I am as certain as I can be that this is a mischievous proposition, and one of which the people will not approve.

Mr. M. I. TOWNSEND—I wish to propose an amendment which I think will meet the views of the gentleman from New York [Mr. Opdyke], by adding to his amendment these words:

"Where the amount of such debts, and the persons, associations or corporations to whom such debts respectively are owing, shall be disclosed by such return, and in such case the amount of such debts shall be assessed against the persons, associations or corporations to whom the same shall be owing; and the Legislature shall have power to pass all necessary laws for the collection of such tax."

Mr. BARTO—Is it in order now to move a reconsideration of the vote by which the section was adopted?

The PRESIDENT—It is in order.

Mr. BARTO—I make that motion.

The motion was received, and laid on the table, under the rule.

Mr. HALE—Is an amendment now in order?

The PRESIDENT—It is not in order. Two amendments are now pending.

Mr. HAND—Mr. President, I do not desire to make any extended remarks. This whole matter lies in a nutshell, and it requires but a very simple illustration to prove the fallacy of the talk of those gentlemen who think that the city of New York includes all of God's creation, and that outside of it there is nothing worth considering. The gentleman tells me in this Convention, that the commerce of this State is of paramount interest. He calls himself a statesman, and he has more than once intimated, on this floor, that we are ignorant, who arrive at conclusions different from those which he has reached. Commerce the paramount interest of this State! We would live as long and as well if the city of New York were blotted out of existence. Agriculture is of paramount interest; next to this, mechanics and manufactures. All stand before commerce in the State of New York, or anywhere else in the civilized world. What

would become of your superstructure if the foundations were to give way? For food and drink, and clothing, which are the necessities of life, are in importance infinitely ahead of mere commercial exchanges. It is true, in the city commerce may be of paramount interest. I do not doubt this. But to call it the paramount interest of the State, to which every other interest must bend, it seems to me is indeed an absurdity. We do not propose to tax a man's indebtedness. The assertion is absurd. Let me illustrate. I purchase a house for \$20,000, I mortgage this property for \$10,000, if you please. It is a warehouse for purposes of business. When I purchased it, I expected to incur the liabilities of property. In the first place, I have to pay for its insurance against fire. My indebtedness does not clear me from this expense. How so? It is necessary that it should be protected; insurance protects it, and so I pay for this service. I pay the whole expense, not half of it, what I really own, deducting my indebtedness. The city where this property is located, is taxed for the protection of my property against fire, by being obliged to support fire companies. This is one of the liabilities of property; it is one of those expenses that property incurs. No man thinks of evading this expense because he is in debt. I employ government to throw its protection around my property. Who is to pay the government for its service in the protection of that property but the man in the possession of it? We do not tax the man; we place taxes on the property, wherever it is found. A man has \$15,000 of foreign capital, if you please, goods he has purchased in London, for which he owes to the full amount. The government protects that property from fraud or wrong-doing, or other offenses that may be committed against it. All the machinery of government—every power of the government, from the lowest court to the court of appeals, is ready for the protection of that property by a machinery extremely expensive. Why, then, should not the man in possession of the property meet this expense as well as others to which the property is incident, and pay for its protection? This is not taxing indebtedness; it is not taxing a man's credit. But my principal objection to the scheme of subtracting a man's indebtedness from his assessment, is this, that it is a system through which nearly all the property of this State, especially the personal property, escapes taxation. The pretending of indebtedness deceives the assessors throughout the State, and furnishes great facilities for the commission of fraud. Many instances were detailed by the gentleman from Onondaga [Mr. Alvord], last night, and many more might be detailed. Their name is legion. Let us get rid of it, and tax property wherever it is found. Let us correct this evil, or the people themselves will correct it, by a revolution of some sort.

Mr. HALE—The objection I have to the amendment offered by the gentleman from New York [Mr. Opdyke] is this, that it absolutely requires all the debts that a man owes shall be deducted from the amount of property for which he is assessed, leaving no discretion whatever to the Legislature. A similar objection ap-

plies to the amendment of the gentleman from Rensselaer [Mr. M. I. Townsend], who has laid down a rigid rule for the government of the Legislature, in regard to deductions. It seems to me, if there is any thing to be left to the Legislature, it is this subject of abatements, unless we propose to adopt the rule, which I think the Convention is hardly prepared to do, that there shall be no deductions made for indebtedness. The proper way is to leave it to the Legislature. I have therefore drawn up an amendment, which I suppose is not now in order, but which I would like to have read for information, for I believe it will meet the question as it should be met. It is to substitute for the amendment of the gentleman from New York, these words: "After making such deductions for indebtedness as may be authorized by law."

Mr. ALVORD—I am opposed to the amendment of the gentleman from New York [Mr. Opdyke], and to every amendment to this proposition as it is now before us. I cannot possibly conceive that any one can come to a conclusion with reference to indebtedness being an offset, that it is other than a matter which should be taken into consideration by the Legislature, for them to determine as they think proper. They come directly from the people, and the people will tell them how they shall frame this law so far as it regards the question of indebtedness. It is entirely out of place to undertake to argue this question at the present stage of our proceedings. The proposition as made by the gentleman from New York [Mr. Opdyke], in its defects, is very little remedied by the amendment of the gentleman from Rensselaer [Mr. M. I. Townsend], or the proposition of the gentleman from Essex [Mr. Hale]. There are ten thousand ways in which taxation is escaped by quasi-indebtedness, and it will take a large number of statutory provisions to provide against them all. It strikes me, therefore, that the whole matter should be left to the Legislature. We have fixed the equality and uniformity of taxation on both real and personal property. We have fixed the provision that each man shall be his own assessor. These are the two cardinal principles that are laid down in the Constitution. The Legislature will build upon these principles, and that, it seems to me, is the way in which this matter should be left. And now, without detaining the Convention, permit me to answer the gentleman from New York [Mr. Opdyke] in his remarks in answer to something I said yesterday, in regard to the personal property of this State. In the year 1866, the United States government collected income taxes from 98,000 persons in this State. Incomes of six hundred dollars each escaped taxation. This exemption was uniform upon the earnings of the men, and not upon the personal property, behind the earnings. It represented \$60,000,000, and the revenues, amounting to almost \$6,000,000 at five per cent, represented an earning of \$120,000,000. Over \$12,000,000 of the revenue was at ten per cent; that also represented \$120,000,000. There you have \$300,000,000 of earned property by the people of the State in the year 1866; shaming out of all countenance your assessment roll, which

took the entire personal property, including the earnings expressed by the income tax as well as bank capitals and insurance companies and personal property in the hands of individuals, and made a sum total of less than \$400,000,000. In 1859, there was a law passed by the Legislature of this State, that authorized any town in any county which conceived itself to be aggrieved by the equalization of the board of supervisors, to carry their case to the Comptroller. Under that law but one case has arisen in this State, and that arose this year in the county of Jefferson. The town conceived itself to be aggrieved by the equalization; and the Comptroller referred the matter to an individual residing in that county. He did the work effectually. He placed in one column the actual cash value of the real estate of every town in that county, and the value at which as estimated it was sold from day to day. In the other column he placed the assessed value of the property of each town in that county. The lowest rate of assessment was at twenty-two and one-half per cent, the highest was forty-five per cent; the average was thirty-three and one-third per cent. The assessment was not correct; and the town was relieved. It was shown that the board of equalization, in making up its account, had taxed the town at forty-five per cent, whereas they had put part of the county as low as twenty-two per cent. I will not call counties by names, but there is a county in this State, in the vicinity of the county in which I live, which, in point of population, in geographical area, is larger than the county from which I am, which has had added, within the last ten days, to its return of assessments about eleven millions of dollars by the board of equalizers, and yet it now stands almost one-third less in valuation than my county. Every one who knows the situation of those two counties knows that the one which is larger in point of population, and larger in area, has vastly more wealth than my county. I trust that since we have done this good work, the best the Convention has yet performed, we will leave it where it is, and let "well done" alone. I will say here to the gentleman from New York [Mr. Opyke], so he and his constituents may hear it, that if it is necessary to grind into the dust the rural population of this State for the purpose of building up the great bulk of commerce in New York, we must revolutionize. We will drive it to New Jersey; we will drive it out of the State if it is necessary; but I do not believe that equality of taxation upon all property, irrespective of its nature will have any such result.

Mr. OPDYKE—Mr. President, I simply desire to ask the gentleman whether the establishment of a rule for the collecting of taxes would "grind the people of the rural districts into the dust." That is all I have proposed. I suppose if we grind them into the dust, we will grind the people of New York into the dust also.

Mr. BELL—I regret that any thing has been said that should prejudice any one portion against other portions of the State. I have examined the subject somewhat, and I am unable to see that either the commercial or the rural portions of the State gain an advantage over other portions by this amendment. It is to be a uniform and equal

rule of assessment, and whatever applies to New York city applies equally under it to the interior of the State, and *vice versa*. It is not necessary that either portion should be ground into the dust, nor that any remarks tending to imply that necessity should be uttered. We have arrived at the result, with a good deal of unanimity, that property shall hereafter be assessed equally and uniformly throughout the State, and that all the property in the State shall be brought upon the assessment roll. We have reached that conclusion where it seems to me wise to leave the subject for the good sense of the Legislature to perfect such a system as will be adapted to carrying out this provision. If there is an abatement to be made on one species of property, they must also allow an abatement on the other species of property, and it comes to precisely the same point, if I understand correctly the argument of the gentleman from New York [Mr. Opyke], that his amendment proposes to reach. It seems to me that it is wise for this Convention to leave the subject entirely to the Legislature hereafter.

Mr. MURPHY—I would like, Mr. President, to hear the amendment of the gentleman from New York [Mr. Opyke] read.

Mr. OPDYKE—If in order I would like to present the amendment in a different form.

The PRESIDENT—It is in order; no action having been taken on the amendment it may be withdrawn or amended.

Mr. OPDYKE—I desire to offer the amendment in another form.

Mr. ALVORD—I rise to a point of order. There is an amendment to the gentleman's amendment pending, and he cannot withdraw his amendment unless the other is first withdrawn.

The PRESIDENT—The point of order is well taken.

Mr. E. BROOKS—I understand that the gentleman from New York [Mr. Opyke] desires to modify only the language of his amendment, not the substance.

The PRESIDENT—The amendment as he now offers it will be read, and then the question will be determined.

The SECRETARY read the amendment of Mr. Opyke as follows:

"The Legislature shall allow an abatement from taxable property of the actual indebtedness of the person owning such property, but all laws authorizing such abatement shall apply to real and personal estate alike."

The PRESIDENT—The Chair does not see that there is any change in the substance of this amendment, and it will be received in this form.

Mr. MURPHY—I am very sorry to see, on the part of the gentleman from Onondaga [Mr. Alvord], an attempt to excite different parts of the State against each other, and especially to excite what may be considered a majority of this Convention; those representing the rural districts against the commercial portions of the State. The gentleman did not want to do this some time since when he dilated so eloquently and so long upon the commerce of this State and its commercial interests as connected with the canals. He then talked and seemed to feel differently in regard to this subject. We are here not to legislate

for any particular interest; we are here to form a Constitution for the whole State, embracing all its interests and doing right by all. But without saying any thing further about this, I will proceed to the subject now before the Convention. We have adopted this provision, that real estate and personal property shall be equally and uniformly taxed. Now, what is personal property within the provisions of this section? Every bond, every note, every evidence of debt, every chose in action by your law is personal property. No matter how it is held. It is immaterial whether it be held as an investment, as property laid aside—if I may so express myself—or whether it be an evidence of debt for goods sold or any thing else in the process of trade. Whether it be in the hands of merchants for goods sold, or whether it be a solid investment made by the capitalist of the surplus funds in his hands, it is still regarded as personal property. The section then proceeds to say: "and the Legislature shall require from every person, association, etc., a sworn statement of the taxable property and the actual value thereof, both real and personal owned by or in the possession of, or under the control of such person." It requires every individual whether he be in business or not, whether it be properly deductible or not, to return all of his property to the assessor; and for what reason? What construction will be put upon this section? Why, for the purpose of taxation, equal and uniform taxation as is required by this section, and the implication is irresistible that you intend by this provision to tax all the property that may be in the possession of an individual whether he own it or not, whether in fact it be a balance in his ownership or not. A firm sells \$500,000 worth of goods for which they receive \$500,000 in notes and due bills. Those are personal property under this section; property which they are bound to return to the assessor, and yet they probably owe \$475,000 for the very goods which they have just sold. You propose, instead of taxing them for that balance of \$25,000, in which they have an actual ownership, to tax them on the whole \$500,000. Now, it appears to me obvious that trade and commerce must be driven from this State by such an operation as that. It is unjust to require that this provision should be passed; and some provision should be made to exempt parties in such cases from taxation for more than the balance. It is not personal property in the common acceptation of the term among the people; still it is in law personal property because it is evidence of property—the evidence of what is owing to the firm. Now, I insist that if we are to put this provision in the Constitution, against which I voted, because I thought it was not a proper subject for a constitutional provision, if we are to put it into the Constitution, we should negative this implication that we intend that all this property to which I have referred shall be taxed, and that we should refer it to the Legislature to say expressly whether it should or should not be taxed. The amendment of the gentleman from New York [Mr. Opdyke] goes further. I am willing to vote for his amendment, but perhaps it is not necessary in the view which I have urged. If his amend-

ment be not adopted, I hope then that the amendment of the gentleman from Essex [Mr. Hale] or something similar will be adopted by which we shall negative the implication which is raised by this section that such property must necessarily be taxed.

Mr. ALVORD—I wish to say to the gentleman from Kings [Mr. Murphy] and to the Convention, that the gentleman misunderstood me if he understood me in the sense which he has just stated. I stated distinctly that if it was necessary for the purpose of building up the commerce of the city of New York, or any other portion of the State, to crush out the industrial interests and property of the rest of the State, I was against it, and I say so now. The gentleman may not have been present in this Convention when divers gentlemen, standing upon this floor, maintained the position that personal property should be entirely exempt from all taxation on the ground that it was not necessary for the protection of commerce; but it was in answer to statements of that kind, which have been pressed as far as they could be pressed here, that I made the remark I did make. I am in favor of protecting commerce. I am in favor of protecting all the interests of the State equally and alike, and so far as this provision is concerned it clearly and expressly leaves to the Legislature the question of the exemption of a portion of a man's property in consequence of indebtedness, and there is no necessity why we should go to work here to complete an article covering this matter in all its details; nor is it in our power to do so within the bounds of the Constitution.

Mr. OPDYKE—I would like to ask the gentleman from Onondaga [Mr. Alvord], if, when he made the remarks to which the gentleman from Kings has alluded, and which he says he made in reply to certain other views which had been advanced here, he was replying to any argument of mine? He says he made those remarks because sundry persons had proposed to exempt all personal property from taxation. I ask him if he charges me with defending that policy?

Mr. ALVORD—I leave that for the gentleman himself to determine.

Mr. OPDYKE—It is rather an extraordinary thing for a gentleman, in answering the arguments of another, to resort to a process of reasoning, or rather of insinuation, which had no justification in the argument to which he was replying, and that when asked whether he intended to represent that the party making that argument had uttered certain sentiments, he should decline to make any response. I have only to say, sir, that that is a method of debate that I am not accustomed to and to which I never resort, and I desire to say now in addition that I have never advocated the exemption of personal property in this State from taxation.

Mr. ALVORD—Will the gentleman allow me to ask him a question?

Mr. OPDYKE—Yes, sir.

Mr. ALVORD—Has the gentleman not again and again upon this floor stated that we must not undertake to tax property in the city of New York which was owned by foreign capitalists, because

if we did we would drive foreign commerce from our shores?

Mr. OPDYKE—In answer to the gentleman, I say that I have never uttered any such sentiment in this Convention, or anywhere else. That charge was made before by another gentleman, and I then denied it, emphatically and explicitly.

Mr. ALVORD—I can only say then, that I beg the gentleman's pardon. But he was so understood by myself, and I think by many others.

Mr. OPDYKE—I generally endeavor to make myself understood so far as I am able. I never intend that my utterances shall be at all uncertain; if I am in error I am always ready to acknowledge it. I say that I have never advocated any such policy as that which the gentleman attributes to me. I have denounced as impolitic, unwise and most mischievous the idea of taxing that which is not property, but which is merely the representative or the evidence of property, without permitting the deduction of the reciprocal indebtedness of citizens, because that is a mere fiction, is not property, and does not constitute any part of the wealth of the State. It is only after striking a balance and getting the whole amount of personal property, and taxing the whole after deducting the reciprocal indebtedness of citizens, that you can arrive at the actual amount of personal property in the State. When you get at the real amount of that property, I am as strongly in favor of taxing it as any man in the Convention, and I am also as strongly in favor as any one of bringing it out by the sworn statements of the owners, so as to get, as far as may be, absolute equality of taxation. That is the principle that I stand upon, and I hope it is the principle that this Convention will stand upon.

Mr. WAKEMAN—There is one point in regard to this question upon which I desire to place myself on record. Gentlemen all around me who support the amendment offered by the gentleman from Chautauqua [Mr. Allen], say that it leaves the whole question to the Legislature. Now, I am not satisfied that it does, and I will proceed to point out briefly why I am fearful that it does not. It requires the Legislature to pass a law taxing the property not exempt by law from taxation. Now, what property is exempt from taxation? What is understood by the courts and by the statutes as exempt property? Why, school-houses, churches, and a certain amount of the property of ministers, etc. That is property exempt from taxation, and it never has been understood that where you deduct a man's indebtedness that is to be regarded as an exemption from taxation. If I own property, and if I owe upon that property as such, it is liable to taxation; and there is no exception to that rule; but by reason of my indebtedness the assessors have the right to deduct the amount of that indebtedness from that property and assess the balance.

Mr. CHURCH—Will my friend from Genesee allow a question?

Mr. WAKEMAN—Certainly.

Mr. CHURCH—It is whether, after the amendment offered by the gentleman from Chautauqua [Mr. Allen] is adopted, it will not be competent for the Legislature to allow an exemption to an

individual equal to the amount of his indebtedness?

Mr. WAKEMAN—That is the very point that I am not satisfied about, by reason of his using the words, "exempt from taxation." Take a single article—if I own a farm that is mortgaged for five thousand dollars, that is not exempt from taxation in any sense of the word, because I am owing the full amount, five thousand dollars; but suppose I owe three thousand dollars, the assessors have the right, under the present law, to deduct my three thousand dollars that I owe, and assess me, not on the amount of the mortgage, but on the balance, two thousand dollars. Now then, when you say in the organic law that property shall be taxed, all species of property equally, this property is not exempt from taxation. I am not satisfied that the Legislature would have the power to exempt property under such circumstances without such an amendment as that offered by the gentleman from New York [Mr. Opdyke], that is not exempt property. When you take this personal property you do not mention the amounts of mortgages or notes, but you take the whole as a whole and deduct the man's indebtedness from it. But this proposition which we have already adopted requires the assessor to assess all property equally which is not exempt from taxation. Now, these gentlemen say the Legislature can fix that. Well, if they can, I am satisfied; but may not some question arise on that point, and some persons say: "Why, that is not exempt property, exemption as known in our laws applies to specific property or to specific classes of individuals, as ministers, etc." It may be that this can be done by the section as it is, but certainly there is no harm in allowing this provision to be put in, so that there can be no mistake about it.

Mr. E. P. BROOKS—I do not believe that further discussion will give us any more light on this subject. It certainly will not reduce the assessment roll next year; I therefore move the previous question.

Mr. MURPHY—I would like the gentleman to withdraw the demand for the previous question for a moment; I wish to answer the gentleman from Orleans [Mr. Church].

Mr. RATHBUN—No, no.

Mr. MURPHY—I suppose the gentleman from Chemung [Mr. E. P. Brooks] is of age, and does not require to be prompted by the gentleman from Cayuga [Mr. Rathbun]. [Laughter]

The question was put on the motion of Mr. E. P. Brooks, to order the previous question and it was declared carried.

Mr. MURPHY—The gentleman from Orleans [Mr. Church] asked a question, and it is a question properly in this discussion, whether under the provision adopted, the Legislature may not exempt from taxation such indebtedness as an individual may owe. Now, I think not. I said when I was up before that the implication in this section was to the contrary, but I did not elaborate the idea. But for the purpose of answering categorically the gentleman's question, let us now look at this section. It says that taxation upon real estate and personal property shall be uniform and equal. Now, real estate has not the

qualities attached to it that personal property has with us in the particular which I pointed out a while ago, where our laws held "choses in action" to be personal property, when in fact they were only the representatives of personal property. Now, you tax real estate, and necessarily do so, because it is visible and tangible; but when you come to personal property, you find this peculiar class to which I have referred, which is not property, but merely the representative of it, although in the view of the law of the land it is personal property. Now, as you have got to tax by your provision all real estate, you have got to tax equally with it all personal property, including this class of personal property to which I have referred. You cannot avoid doing so. It is the necessary construction of the section in the way you have drawn it, that there shall be equality and uniformity in taxation as between real estate and personal property.

Mr. CHURCH—Will the gentleman allow a question?

Mr. MURPHY—Yes, sir.

Mr. CHURCH—What effect, then, have the words "not exempt by law?"

Mr. MURPHY—I suppose they refer to the particular cases of classes of exemption; not to property, but to classes of property, as the property of churches, the property for educational purposes, both real and personal.

Mr. BARKER—Does the gentleman think the interpretation properly limits the provision to exemptions now existing? Would it not apply to exemptions hereafter made by legislative enactment?

Mr. MURPHY—I will answer directly, that I think it would apply to future exemptions; but I will answer further, that it would apply only to that kind of exemptions which are now made by law. Those exemptions can be increased, but it is not meant to include exemptions of indebtedness. Now, if that be so, and the gentleman from Orleans [Mr. Church], or the gentleman from Chautauqua [Mr. Barker], or the other favorers of this resolution, would insinuate that this exemption can be given, what objection can there be to putting into the Constitution that the matter shall be within the province of the Legislature? Why exclude it? If those gentlemen think that the Legislature may do it, why not put in an express provision so as to give us freedom from all doubt on the subject?

Mr. BARKER—I will answer the gentleman. The reason why we, or at least why I, opposed it is that it gives exemption from taxation to a portion of the real estate of the country. It has the effect to exempt from taxation a portion of the real estate as well as the personal property. If a man buys a farm and gives a mortgage upon it and holds it, then he has abated from the value at which the farm is assessed, this debt which he owes upon it. That is the reason why I opposed it.

Mr. MURPHY—That is the law now.

Mr. BARKER—No, sir; that is not the law now.

Mr. MURPHY—Well, what he owes on his

real estate is exempted from his personal estate. Now, why not put this provision in, and let us not go on debating here this point, which is a subject of doubt in the minds of some of us, and which may be decided one way or the other hereafter. If the danger to which the gentleman from Chautauqua [Mr. Barker] refers is likely to arise, you can provide by an amendment that mortgages shall not be exempted. The truth is, Mr. President, as I have said before, that this subject does not belong to the Constitution. It is a subject for legislation. You propose here to adopt an iron rule which may work irreparable injury to the great interests of this State, and which you cannot get rid of except by calling a new Convention. If it be wise and proper to adopt these provisions, let them be adopted by the Legislature, so that if they are found to work badly they can be got rid of in the next session, and in the mean time no great injury can arise. It should be left to the Legislature to determine. Now, I wish to say a kind word to my friend from Onondaga [Mr. Alvord]. I know his heart is in the right place; I know he is trying to do what is best for the people of this State; but he is a shrewd man who likes to carry his point; and, in regard to a certain class of interests, if I may so express myself, I think he has gone a little too far. But I accept what he said on that subject. He aimed his shaft, I think, at a remark which was not made by the gentleman from New York [Mr. Opdyke], but which I believe was made by me. I did say, some days ago, when this subject was up, that, in my view, personal property which was employed in business should not be taxed. I asserted that proposition, and I do not know that any body else has gone so far in this Convention; and the reason that I gave for it was that the whole of this State—not the city of New York alone, but every city and village and hamlet in this broad Empire State—is interested in its trade and commerce; and as that trade and commerce flourishes, so do agricultural and mechanical interests flourish; as it languishes, they languish. There is a common bond between them. Trade and commerce, in my judgment, are the vital energy, the vital spirit, in the prosperity of the State, and if we destroy that, as I expressed myself before, we destroy the goose that lays the golden egg. I said that with no view certainly—and if the gentleman so understood it; I disclaim it—of exciting sympathy in favor of my own locality or prejudice against any other. Far from it. I am not, I think, so lost to what is proper in this body as to thus discriminate in favor of or against any localities.

Mr. RATHBUN—I have but a word to say, and mainly to express my surprise that so good a lawyer as my friend from Kings [Mr. Murphy] should stand up here and make such an argument, and excite himself to such a degree as he has, upon the section which has been adopted by this Convention. The gentleman cannot fail to see that his whole argument falls to the ground, for the simple reason that the proposition adopted is one simply determining that taxation shall be equal upon real and personal property, leaving the entire matter of abatement for debts, upon the one and upon the other, altogether in the

hands of the Legislature, deciding nothing upon that subject. It shall be equal. You shall not put the burdens upon real estate, and exempt the personal. You shall not put the burdens upon the personal and exempt the real; but you shall treat both alike, making each bear an equal burden. Who is to decide whether debts shall be included or excluded from taxation? The Legislature. But if they allow debts to be deducted in favor of personal, they shall do so in favor of real property. Is there any thing wrong in that? That is all there is of it. You cannot torture it into any thing else.

Mr. MURPHY—Do I understand the gentleman from Cayuga [Mr. Rathbun] to say, that whatever the Legislature may do in the premises will be right and proper, and that they are the arbiters of this question?

Mr. RATHBUN—I have not said that. I say this: I say, that this Convention have simply decided that taxation upon real and personal property shall be uniform and equal, and the Legislature have the power to say, that if a man holding personal property is in debt, he shall be exempted from taxation to the amount of that debt; but they cannot say that without saying the same thing in favor of the real.

Mr. MURPHY—Will their determination of that matter be final?

Mr. RATHBUN—Their determination of that matter will not be final, because the Legislature may amend it, and may correct it, and may make it right, and the amendment offered here, proposing to put into this Constitution an unbending rule is the very thing I object to, because it may work wrong; because we take away from the Legislature the power to amend and alter the rule, and to make it uniform and equal whenever they see fit.

Mr. MURPHY—That is begging the question. The court of appeals may say that what they do is not right, is not constitutional.

Mr. RATHBUN—No court of appeals will ever say that, in this State, I will be bound, for it is obvious to common sense, it is the unavoidable construction of the section. You shall "tax equally." What does that mean? Tax the whole and make no abatement in one that you do not in the other, or make abatement upon one and upon the other. That is equal. That is all the Convention have done. Yet gentlemen who are determined to make this thing—I think by way of extreme and I think unnecessary caution—safe, in their estimation, will make it odious with the people, and will make it oppressive, because you cannot insert an arbitrary rule of that kind in the Constitution that will not be erroneous; but as long as you leave it in the power of the Legislature to determine as to the question of equality of taxation, so long you leave it in the power of the people to make it right. That is where I propose to leave it. If this Constitution should be adopted, the Legislature elected will come together fresh from the people, and with this section of the Constitution before them, and abundantly discussed in the papers and in conversation, they can establish a law founded upon it. Shall we trust them to pass a law and determine in regard to abatements in favor of debts on one side and on the other and equalize it? Why

not? I would like to know upon what ground we are to undertake to tie up and restrict the Legislature entirely in regard to the question of equalizing this taxation, and say that we know better than they do how to do it; why we shall undertake to lay down a rule for twenty years, instead of leaving it to the people to determine it by the Legislature. I am not afraid to trust that question to them. It belongs to them; and so much does it belong to them that the gentleman from Kings [Mr. Murphy] himself has made an argument that the whole thing belongs to them, and we ought not to meddle with it. Even the announcement of the rule that taxation should be equal he objects to because that is in the power of the Legislature. Very well. It has been in the power of the Legislature for forty years, and what is the result? It is that taxation has been grinding the real estate, compelling it to pay the whole tax upon property, and the personal property has escaped. Now, I want this question to be put in the position where it is now by the section which has been adopted, that taxation upon real and personal property shall be equal. The Legislature may determine whether debts shall pay or whether debts shall be abated from the tax, and it properly belongs to them and not to this Convention.

Mr. KRUM—I desire to call the attention of the Convention to my construction of the words in the section adopted—"not exempt by law." The question was asked by the gentleman from Chautauqua [Mr. A. F. Allen] of the gentleman from Kings [Mr. Bergen], whether the words "not exempt by law," related to property now exempt by law, or whether future legislation could exempt future property. The shape of the question by the gentleman from Chautauqua [Mr. A. F. Allen], and the answer by the gentleman from Kings [Mr. Bergen], seem to concede the proposition that the Legislature hereafter might exempt property from taxation. Now, if the construction of those words "not exempt by law," relates to property now exempt by the laws of the State, then, under this section, the future Legislature can exempt no property, either real or personal. If the words "not exempt by law" mean to give future legislators the right to exempt property not now exempted, then this Convention have been fighting this question during all this debate and have accomplished nothing. If the words "not exempt by law" permit future legislators to exempt property, then we stand to-day where we stood before any action was taken by this Convention at all. We have been fighting a myth; we have been shooting at a phantom; we have been frightened at ghosts. Let us look, sir. "Taxation upon real estate and personal property in the State shall be equal and uniform upon all such property not exempt by law." Now, I ask, if future legislators have the right to make exemptions, what prevents future legislators from exempting debts upon personal property and not exempting debts upon real? What prevents future legislators from exempting debts upon real property and not exempting debts upon personal? Is not then the whole power in the Legislature under this section just as it is in the Legislature without this section? Where, from the section of,

this Convention, is the boasted equality of taxation? What have we done? Why have we been exhausting the time of this Convention and accomplished nothing? Can it be pretended that the Legislature to-day, without a constitutional provision, have not the right to do just what they may do under this provision? They may do no more by reason of this provision, and may do no less. I voted against the proposition for these reasons. We are placing in the Constitution of the State of New York that which is not necessary—that which accomplishes nothing. Long speeches and windy words have gone forth and nothing has been done. We stand to-day, with the section adopted, where we stood without it.

Mr. ANDREWS—I am opposed to the amendment which has been offered by the gentleman from New York [Mr. Opdyke], and to the other amendments upon the same subject, for the reason simply that, as I construe the section as it stands, that amendment is wholly unnecessary. I believe that by the construction of the section as it now stands, it will be within the power of the Legislature to make exemptions from taxation of the debts owing by the person who shall be taxed. I oppose it upon this ground, and I oppose it for the same reason that I voted against the second clause of the section as adopted, to wit: that the matter embraced therein is purely matter of legislation, and should be left within the control of the Legislature. But I am constrained to differ with my friend from Cayuga [Mr. Rathbun] in respect to his construction of the section as it stands. I understand him to say that the great thing to be accomplished, in his judgment, and which is accomplished by that section, is this: that there shall be equality of taxation of real and personal estate within the State, and to prevent the Legislature from exempting personal property from taxation to the extent of debts owing by the person taxed, without at the same time exempting the owners of real estate from taxation to the extent of the debts owing upon that real estate. As I construe the section as it stands, it would be entirely competent for the Legislature to provide that the owner of personal property should be exempt from taxation to the extent of the debts owing by him without making any similar provision exempting the owner of real estate from taxation by reason of the debts owing by him. The section, in substance, is this: that the taxation of real and personal property shall be equal, except as to such property as is exempted by law. The Legislature passes a law saying that personal property, to the extent of the debts owing by the party taxed, shall be exempt from taxation, and I submit to the Convention that such a law would be entirely within this provision, although it made no corresponding deduction of debts in favor of the owner of real estate taxed therefor. The principle of equality would not apply to that portion of personal estate exempted, because it is not by the section to apply to property "exempt by law." I shall therefore vote, as I said in the outset, against the amendment now pending before the committee, as I think the section as it stands allows the Legislature to provide for the exemptions referred to in the amendment.

Mr. M. I. TOWNSEND—I offered my amendment not as believing that any amendment such as that offered by myself or by the gentleman from New York [Mr. Opdyke] was necessary, but because I desired that if the amendment offered by the gentleman from New York [Mr. Opdyke] should be adopted it might not in any event, although undesigned, work a mischief. We have not required that the person to be taxed should make a return of the debts. There is no requirement that there should be a detailed statement of the debts; and my amendment goes to this extent: that the exemption proposed by the gentleman from New York [Mr. Opdyke], and which, if I were sitting as a legislator I would vote for, shall not occur except that the person making the return shall state the person, association or corporation to whom the debt is due or to become due, and the amount of the debt, and that in that case the assessment shall be made against the person, association or corporation to which the debt shall be owing, so that property shall not escape taxation at all under the pretext that somebody owes a debt in respect to it. Take this case: here is a farm worth ten thousand dollars. A man purchases it who has but a thousand dollars, and he incurs a debt in respect to that farm and secures it by a mortgage. He incurs a debt in respect to that farm of nine thousand dollars. Now, if a return should be adroitly made, and he should return that he owed nine thousand dollars on that farm, and the return should not tell to whom the debt was due, it very possibly might result that nine thousand dollars of the value of that farm should be withdrawn from the tax list, and the man to whom the debt was due would entirely escape taxation. I sympathize with those persons who are in debt, whether they are in debt for real estate or personal estate. I have had occasion to sympathize with that class of people all my life, and I have occasion to sympathize with them still. But there is another kind of poor people that I think we need not mourn over for a great length of time, and that is the class of people to whom these debts are due. They need not be exempt, and if we provide that the man who is in debt shall be exempt in respect to his debts, then certainly we should make adequate provision that the person to whom the debt is due be taxed for that indebtedness; and we should provide that the man who wishes to have himself exempted from taxation because of his indebtedness, should give himself the trouble to tell the assessor, and thus through the assessor the public authorities of the State, who his creditor is, to the end that what is exempted for him should be taxed to the man to whom the debt is due. There is not the least difficulty in the world. Here is the property, I do not care whether it is real or personal, and here is the man who is in debt in respect to it, and he owes that debt—to somebody. My amendment further provides that the Legislature should have power to pass all needful laws for the collection of that tax; that is for the collection of the tax as against the person having a debt in respect to property, whether it be real or personal, and there is no difficulty about it.

Mr. HAND—There is a great deal of property, evidences of debt held by non-residents against

the farmers of this State. Would you have that entirely lost?

Mr. M. I. TOWNSEND—Certainly not. That is exactly the thing that I am after, and that is exactly one of the worst grievances of the olden time. It is perfectly competent to put the tax upon the debt and to make the payment of the tax upon that debt apply, as between the debtor and the creditor, so far toward the extinguishment of that debt. We might have a little difficulty so far as past debts are concerned; there possibly might arise the constitutional question, but for all debts hereafter to be contracted in the State, or to be enforced in the State, there is no constitutional objection in the way, whatever. And it is that class of poor men exactly that I want to reach by my amendment. It is the very reason why I added it to the amendment of the gentleman from New York [Mr. Opdyke], so that if the amendment of the gentleman from New York [Mr. Opdyke] should meet the views of this Convention we should not be left with the deduction from taxation upon property in respect to debt, but with no provision for the taxation of the debts themselves. That is what I wish to reach, and if my provision is not accurate, I will be obliged to my friend from Broome, [Mr. Hand], or any other gentleman who will make my amendment more specific.

Mr. HAND—Suppose a man owns fifty thousand dollars in goods and has his goods in a warehouse in the city of New York?

Mr. M. I. TOWNSEND—I would provide by law that the merchant who has his goods in charge should be required to pay that tax, and that it should be so far as the State New York is concerned, an extinguishment of so much of the debt to the London creditor.

Mr. DUGANNE—In that case, by deducting it from the debt, will not the creditor impose that in his contract and therefore make the debtor pay after all?

Mr. M. I. TOWNSEND—Very possibly; but the State of New York will be protected. The State of New York will take care of itself; and, although it will not help the poor man quite as much as some of us would like to protect him, yet it will enable the State of New York to realize the tax upon all property, and thus do equal justice by every body, I see no reason why a London merchant, having fifty thousand dollars' worth of goods in store in the city of New York, should not help pay our taxes. I do not know what right a London or a Boston merchant has to come here and sell his goods or store his goods in the State of New York and have us incur the expenses of guarding them from fire, or guarding them from robbers, or guarding them from every possible contingency that may arise; allowing these men to litigate in our courts, we paying the judges of the court their salaries for conducting the litigation and deciding upon questions in which they are interested, and yet their property being free from taxation. And I am more confirmed in my opinion when I find that even the gentleman from New York [Mr. Opdyke], whom I have mistaken during two arguments here—one occurring last summer and one occurring last night—is utterly opposed to any thing

of the kind. He is utterly opposed to having foreign merchants and capitalists having their property here, and bearing no share in the expense of the government that protects them, and takes care of them, and preserves their interests. It is for the very reason that I wish no such thing. Just see what will be the effect, if you adopt the amendment of the gentleman from New York just as it stands. A man returns a debt of fifty thousand dollars, but he don't tell one word whom he owes it to. You have got your return, but your return is used for the purpose that it is said language was devised for, to conceal the truth. The return is made, and no account of the debts made. The man says, "I owe fifty thousand dollars," and he says no more. Then the London merchant, the Boston merchant, the Lowell manufacturer are to entirely escape taxation. I added my amendment because I thought that was the true mode of legislation. Although you may not deem the amendment itself necessary, yet if we are to have a constitutional provision that shall go as far as the proposition of the gentleman from New York [Mr. Opdyke], the spirit of which I entirely approve, certainly we ought not to let it be possible that evil shall result from it by the debtor using it to make returns in gross, leaving the creditor to pay no portion of the tax.

Mr. FRANCIS—I do not propose to enter into this general discussion, but to say a word in reply to the remarks of the gentleman from New York [Mr. Opdyke] in reference to the United States Commissioner of Internal Revenue, Mr. Wells. I understand him to charge Mr. Wells with misrepresentation, inadvertent or otherwise, in affirming that the Finance Committee have based their argument upon the assessed value of the property of the State instead of its absolute value. I have only to reply that Mr. Wells used the very language made use of by the committee in the report, and as to whether he is correct or not in his affirmation, I propose to read an extract or two from that report. On page 16 we read as follows:

"The financial condition of the State, and the excessive taxation now being imposed upon the people, furnish to the minds of the committee conclusive reasons, if there were no other, against the creation of additional indebtedness."

Now, what was meant by the "financial condition of the State?" On page 17, succeeding, and in the same connection, appears the following statement:

"The highest assessed valuation of all the property in the State is \$1,432,639,615, from which it will be seen that this State is permanently indebted to considerably more than one-third of the assessed value of the property therein."

Then, again, on the same page, after enumerating the items of taxation, the committee sum up the aggregate annual taxation as more than eleven per cent on the assessed valuation of the property, and equal to a tax of \$45 on every man, woman and child in the State, and more than \$200 upon every voter. Further, in the report, in the same connection, appear the following significant paragraphs:

"If this excessive annual taxation should be

capitalized, it would require the sum of \$3,000,000.00 at six per cent to pay it, which is \$1,400,000.00 more than the assessed value of the whole property.

"If, therefore, the present amount of taxation is to be regarded as permanent, and cannot be materially reduced, the unwelcome truth must be acknowledged, that the property of the State is mortgaged to more than the amount of its full value."

If this language which I have quoted, Mr. President, is not clear and explicit, bearing out fully the assumptions of Mr. Wells, then I am incapable of understanding or comprehending the meaning of words. As to Mr. Wells' statement, of the amount of insurance, and his deductions therefrom, I am quite willing to leave the matter to the intelligence of all who have read his argument; an argument which has not been refuted, and which I believe to be wholly unanswerable. It was drawn out in a correspondence with myself, and is herewith presented in full:

TRUY, N. Y., Oct. 26, 1867.

Hon. DAVID A. WELLS, Special Commissioner of the Revenue.

Dear Sir: Inclosed I send you an extract from a report of the Committee on Finance, made to the Constitutional Convention of the State of New York, August 8, 1867, in which an estimate is given—both in detail and aggregate—of the amount of taxation to which the people of New York are annually subjected, and also the relation of State indebtedness and taxation to the value of State property. As your attention as United States commissioner of revenue has been for some time past given to the subject, I will feel obliged if you will examine the estimates in question, and give me your opinion as to their correctness. I am, sir, yours very truly,

JOHN M. FRANCIS,

Member N. Y. State Constitutional Convention.

"TREASURY DEPARTMENT,
WASHINGTON, D. C., Oct. 30, 1867. }

'Hon. JOHN M. FRANCIS.

Dear Sir: I have the honor to acknowledge the receipt of your favor of the 26th, asking my opinion relative to the correctness of the estimates of the amount of taxation and indebtedness of the State of New York, contained in an extract from the report of the Finance Committee of the Constitutional Convention of that State, submitted August 8th, 1867. The portion of the report referred to reads as follows:

"This condition, and the amount of taxes upon the people of the State will be briefly stated:

The outstanding debts of the State amount to.....	\$48,351,682 22
The debts of the cities, villages and towns.....	85,000,000 00
Making a total State indebtedness of,.....	\$133,351,682 22
The proportion of the national debt belonging to the State to pay is not less than.....	500,000,000 00
Making a total of,.....	\$633,351,682 22

To say nothing of the unascertained national indebtedness, which high authority has placed at the same amount.

h The highest assessed valuation of all the property

in the State is \$1,639,432,651—from which it will be seen that the State is permanently indebted to considerably more than one-third of the assessed value of the property therein.

The annual taxation is very much larger than the permanent debt would indicate.

DIRECT TAXES.

Direct taxation by the State.....	\$12,800,000 00
Direct taxation by counties and towns,.....	32,000,000 00
Direct taxation by cities, villages, etc.,.....	18,000,000 00

\$62,800,000 00

INDIRECT TAXES

The whole amount of internal revenue received by the United States government during the fiscal year ending 1st July, 1866, was \$310,906,894, of which this State paid, in fact, one-fourth, but say one-fifth,.....

62,181,398 80

The amount collected by the tariff was nearly \$200,000,000, of which the people of this State must have paid, as consumers, one-fifth, amounting in the aggregate to \$40,000,000 in gold, which is equal in currency to,.....

55,000,000 00

Making an aggregate of taxation of,.... \$180,981,398 80

Which is more than eleven per cent on the assessed valuation of property, and equals a tax of \$45 upon every man, woman and child in the State, and more than \$300 upon every voter. If this excessive annual taxation should be capitalized, it would require the sum of \$3,000,000,000, at six per cent, to pay it, which is \$1,400,000 more than the assessed value of the whole property."

"The report of which the above extract forms part is signed by Hon. Sanford E. Church, chairman, and appears to have been concurred in by a majority of the members of the committee, of whom Messrs. George Opdyke, Augustus Scheil, and Erastus Corning, are leading members.

"My opinion in respect to these estimates which you have asked, is that they are incorrect; that they do not fairly represent the actual state of the case and are calculated to needlessly alarm the tax payers, and to impair both the State and national credit. In support of my position, I would ask attention to an analysis of the estimates of the Finance Committee, as above given. The first item in the estimate is the debt of the State, which is given at \$48,351,682.22. Of this amount \$18,248,460, is represented by the State canal property, which same property for the last fiscal year paid from its earnings—first, the interest on its debt, \$1,035,330; and secondly, contributed to a debt sinking fund the further sum of \$1,839,426.30. So far, therefore, from this portion of the debt being any burden to the people of the State of New York, it is in fact, through the property which it represents, a source of great profit, and has of right, no place in any fair statement of State indebtedness, without a corresponding credit being at the same time carried to the other side of the account. Furthermore, as the earnings of the canals over and above their own interest obligations were sufficient to more than pay a six per cent interest on the remaining portion of the State debt, we think we are justified in asserting that the State of New York has in fact no State debt whatever, in the sense of debt being a burden; and we accordingly strike the whole amount from our revised estimates. We would here remark that the average interest on the canal debt, as given by the State Comptroller, is about 5 1/10 per cent.

"We come next to the second item of the

Finance Committee's estimate, viz.: the city, village and town debts, the aggregate of which is stated at \$85,000,000. Of this amount \$33,958,545 represents the indebtedness of the city of New York; to the credit of which stands, first, sinking fund of \$10,627,000, with cash deposited in the hands of the city chamberlain of \$601,644; the whole reducing the net indebtedness of the city to \$22,142,000; secondly, the Croton water-works property representing a cost of \$10,785,000, which like the canal debt affords an annual revenue sufficient to pay its own interest and something besides. Any indebtedness, therefore, on this account may be fairly considered as balanced by an equivalent credit on the other side of the ledger. Another large item of this city indebtedness is \$9,648,000 representing the Central Park; but as this improvement has, it is understood, brought to the city and the State from the increased value of lands adjoining, an additional revenue, more than sufficient to pay the interest of its debt, its enumeration among the list of burdensome obligations should either be entirely omitted, or received with certain essential qualifications. In like manner the debts of nearly all the other cities and towns of the State, when carefully examined, will be found to be offset by revenue paying property to a very considerable amount, which property, corporations or private individuals would gladly purchase at an appraised value, and hold as profitable investments. Making proper allowance, therefore, for such credits, the city, town and village debts of the State of New York instead of being \$85,000,000, should, we think, be reckoned at a much less sum—probably not more than \$50,000,000.

"The next leading item in the account of the Finance Committee is 'the proportion of the national debt belonging to the State of New York to pay,' which is set down at the large sum of five hundred millions (\$500,000,000:) 'to say nothing,' using the words of the report, 'of the unascertained national indebtedness, which 'high authority has placed at the same amount.'

"As the unascertained debt is not yet recognized, and is chargeable for neither interest nor sinking fund, we will leave it to the high authority referred to, whoever he may be, and proceed to inquire as to the correctness of the specific charge of \$500,000,000.

"If the national debt were to be paid off by direct taxation, this taxation would be according to representation, or what is the same thing, according to population, and we therefore assume this as the only fair basis of apportionment. What then are the facts and figures? The population of the Union is at least 36,000,000, and of this the population of the State of New York (3,800,000) constitutes less than one-ninth part. The amount of the national debt on the first day of October, 1867, was \$2,495,277,446—one-ninth of which would be \$277,253,000, and not \$500,000,000.

"Assuming the correctness of our estimates and figures as above given, we have then as a grand total of the present burdensome indebtedness of the State of New York—national, State and local—\$327,000,000, instead of \$633,351,682, as the Finance Committee have estimated.

"If, furthermore, we were to base the proportion of national indebtedness, which constitutes the largest item of this account, on the apportionment which will be made according either to the increased population or wealth at the time of its maturity (fourteen to twenty years hence), it is evident that the burden must be represented by much smaller figures than those above stated.

"We would next ask attention to the estimates of the annual taxation of the State of New York, which, according to the committee, amount in the aggregate to \$180,981,000 per annum, divided as follows:

DIRECT TAX.	
State, county and local, ...	\$62,800,000
INDIRECT TAX.	
One-fifth of the internal revenue collected by national authorities, ...	62,181,000
One-fifth of the amount collected through the customs, ...	56,000,000
	<u>\$180,981,000</u>

"With regard to the amount of the direct taxes given by the committee, we have no data available for their discussion, and accordingly assume the correctness of the figures; but with reference to the first item of the indirect taxes, viz.: the proportion of the internal revenue collected by the national authorities and paid by the State, which the committee assume at one-fifth of the entire amount, we would say, first, that as the estimates submitted refer to the burdens and obligations of the immediate present and not to the past, the basis of calculation should be the amount of internal revenue collected for the fiscal year ending June 30, 1867 (\$268,000,000), rather than that collected for the fiscal year ending June 30, 1866 (\$310,000,000), before the taxes had been to any considerable extent abated. Now one-fifth of the former amount would give \$53,600,000 in place of \$62,181,000.

"The estimate, however, taken either way, means nothing and proves nothing. The internal revenue collected by the general government from the people of New York divides itself mainly into two portions—taxes upon incomes and taxes upon manufactures. Of the first, the taxation falls exclusively upon profits, and upon only a small portion of the aggregate profit of the whole population (\$1,000, house rents and repairs being excepted). If the income tax receipts have been large from the people of the State of New York, the profits and the ability to pay have been equally large, and there is probably no man in the whole State who desires that his ability to pay a large income tax should be any less next year than that of any year which has preceded.

"As regards the taxes on manufactures, which constitute the main item of internal revenue receipts, the tax, as a general thing, does not fall upon the producer, but upon the consumer; and the supposition that it is chargeable in gross upon those who pay the tax in the first instance, is entirely unwarranted. If the people of the State of New York consume one-fifth part of the whisky, tobacco, cigars, coal oil, cotton and cotton goods, woolen cloths, boots and shoes, and all the other leading products of the country, then they pay one-fifth of the whole internal revenue; and not otherwise.

"Again, the committee further assert that the amount of taxation collected under the tariff is nearly two hundred millions per annum, of which the people of the State of New York pay as consumers one-fifth, amounting in the aggregate to \$40,000,000 in gold, or \$56,000,000 in currency. In reply to this, we would say that the largest amount collected under the tariff in any one year was in 1866, and was not two hundred millions, but one hundred and seventy-nine millions; and for the last fiscal year it was only a little in excess of one hundred and seventy millions; one-fifth of which would be thirty-four and not forty millions, as the committee estimate. But there is no evidence to show that the people of the State of New York pay one-fifth of the revenue collected under the tariff, any more than that they pay one-fifth of the whole amount collected under the internal revenue. On the contrary, the bulk of the customs duties are collected from articles which enter most largely into general consumption, as sugars, tea, coffee, silk, rice, tobacco, wines, woollens, drugs, hardware and the like. Does any one pretend that less than four millions of the people of the United States consume one-fifth part of all these products annually imported? The proposition is itself an absurdity. In fact, to assume sixty millions as the share of the national taxation which annually falls upon the people of New York, would probably be a much fairer estimate than that of the committee, viz.: one hundred and eighteen millions, which being allowed, would make a total annual taxation of one hundred and twenty-two millions, instead of one hundred and eighty millions, which, in place of being 11 per cent on the assessed valuation of the property of the State, viz.: \$1,639,432,651, is in fact but little over 7 per cent. But upon what evidence, we would ask, does the Finance Committee of the Constitutional Convention, in attempting to compute the percentage of taxation to property, assume \$1,639,432,651 as the true value of the property of the State of New York? Does not every one who has had the slightest experience in these matters know that assessed valuations of property for purposes of taxation rarely approximate to any thing like true values? Does not every one furthermore know that real property in the State of New York is rarely assessed at over fifty per cent of its true value, while the assessment of personal property does not exceed twenty-five per cent?

"This matter was made the subject of special investigation by the writer in 1864, and the results then ascertained and published were of the most striking character, and fully confirmatory of the assertions respecting under-valuations above made. Thus it appeared from the report of the State assessors, presented to the Assembly of New York, January 12th, 1863, that the amount of personal property belonging to citizens of New York, insured December 12th, 1860, in the various insurance companies belonging to, or doing business in the State, was \$1,471,000,000, a sum considerably greater than the valuation of all the real and personal property assessed by the State during the year 1861; and one thousand one hundred and thirty-eight millions (\$1,138,000,000) in excess of the official valuation of all

the personal property of the State for the year 1863

Again, in 1863, a fire occurred in the city of Troy, which was estimated to have destroyed from one-fifteenth to one-twentieth of the property of the entire city. The money value of the property actually destroyed was officially estimated by the fire commissioner at \$2,724,000 (an amount exceeding one-half of the assessed valuation of all the personal property of the city); and on this an insurance was paid of \$1,396,000, an amount equivalent to one-tenth of the assessed value of all the property of the city.

"An examination of the census and assessment returns of one of the thriving agricultural towns of New York, also furnished proof beyond dispute, that while the personal property of the town was returned and assessed by the county assessors of 1863 at \$188,412, the actual and real value was in all probability in excess of \$1,000,000; the generally admitted value of the personal property of a single individual in the town being in fact more than double the amount returned and assessed for the whole town by the State officials.

"We would also mention as a further illustration of the truth of our position, that by reason of a new valuation of the real property of the city and county of Philadelphia during the current year, the taxation on the same has been reduced from \$4 per \$100 to about \$1.40 per \$100; thus showing that the assessment of former years was about one-third of the true and actual value of the property taxed.

"So far then from \$1,639,000,000 representing the true value of all the property of the State of New York, as is assumed by the committee, the true estimate cannot be less than \$4,000,000,000. On this basis the relation of taxation to property instead of being eleven per cent, according to the committee's estimate, is only about three per cent; and with the debt remaining as it is this percentage, from the increase of wealth and population, will continually and rapidly decrease.

"Were it expedient, this analysis might be much further extended, but sufficient, it is believed, has been said, to justify the truth of the original assertion, viz.: that the reports and estimates of the Finance Committee of the Constitutional Convention of the State of New York are incorrect, do not fairly represent the actual state of the case, and are calculated to needlessly alarm the tax payers, as well as to impair the credit of both the State and the nation.

"We would not be understood as imputing any but the most honorable motives to the eminent gentlemen who have sanctioned the publication of these estimates; but we believe, nevertheless, that they have been unwittingly led into error. They have, in fact, only presented the debit side of the balance sheet, and have failed to recognize the real and great advantages on the other side. That their report has been made subservient as a weapon to assail the financial credit of the United States is evident from the fact that it has already been republished and commented on in some of the most anti-American journals of Europe, as evidence of the approaching and inevitable bankruptcy of the country.

"That our debts, national, State and local, are sufficiently large to demand the highest prudence and economy on the part of legislators cannot be denied; but they are not so large as to afford an occasion, with honesty and good management, for the slightest public uneasiness.

"Exaggeration of our public burdens would appear to have been adopted by certain parties on both sides of the Atlantic, as a settled policy, with the aim and intent of procuring, through national discouragement, the consent of the nation to an act of national villany.

I am yours, most respectfully,

DAVID A. WELLS,
"U. S. Com. of Internal Revenue."

Mr. AXTELL—I move the previous question on this section.

Mr. HALE—I ask the gentleman to modify that motion by moving the previous question on this amendment. This motion will cut off all amendment.

Mr. OPDYKE—I hope the gentleman will withdraw his motion for a moment.

Mr. AXTELL—I move the previous question on the amendment proposed by the gentleman from Rensselaer [Mr. M. I. Townsend].

The question was put on the motion of Mr. Axtell, and it was declared carried.

The question was then put on the motion offered by Mr. M. I. Townsend, and it was declared lost.

Mr. HALE—I offer the following substitute to the substitute proposed by the gentleman from New York [Mr. Opdyke]: "After making such deduction for indebtedness as may be authorized by law." I have only to say in regard to this amendment that it expresses in terms what I think the majority of this Convention understand to be the purport of the section as it was adopted this morning. It is said by some gentlemen that the section is clear enough without any such amendment. My only answer to that is, that we find here gentlemen of distinguished ability, like the gentleman from Cayuga [Mr. Rathbun] and the gentleman from Onondaga [Mr. Andrews] differing as to the meaning of this section. I am sure that in voting for the first part of the provision of the gentleman from Chautauqua [Mr. A. F. Allen] I do not understand that we should take away from the Legislature the power to make deductions for indebtedness. I do not think the Convention so understand it; but in order to remove any doubt upon the subject, I propose the amendment.

Mr. AXTELL—I now move the previous question on this section.

Mr. VAN COTT—I have an amendment which I would like to read to the Convention.

Mr. AXTELL—I will withdraw my motion.

Mr. VAN COTT—I think there is this difficulty in the way of the amendment offered by the gentleman from Essex [Mr. Hale]: The unamended section provides for equality and uniformity of taxation. The amendment provides that such taxation shall be uniform and equal, except as the Legislature may render it unequal. There have been several criticisms upon the section proposed, and the several amendments proposed. I have listened very carefully to the several amendments

and the course of the debate. I think that the view suggested by the gentleman from Schoharie [Mr. Krum], as to the construction of the provision for exemption, is unanswerable. I have drawn a section, which I propose to present as a substitute when it can be received. I understand it will not now be in order, but I desire to read it; and it seems to me it contains the substance of what we are all striving for, and avoids the difficulties of construction which have been pointed out by several gentlemen on this floor. With the permission of the Convention I will read it. I propose to present it at the proper time:

"Taxation on real and personal property shall be equal and uniform in this State. A sworn statement shall be delivered to the taxing officers by all persons and corporations who own, possess or hold such property, specifying the ownership, quantity and estimated value thereof; in which may also be specified the particulars of the indebtedness of the persons and corporations owning such property. The Legislature shall pass laws giving effect to the above provision, subject to such deductions, which shall be equal and uniform as to real and personal property, and to such exemptions, as may be prescribed by law."

It will be perceived, first, that there is a provision for a fixed rule of uniformity between real and personal property; secondly, a provision for the discovery of all real and personal property subject to taxation; thirdly, a privilege given to the person making such statement to disclose his indebtedness, with a view to any such deduction of indebtedness as may be provided for by law, but not requiring such a disclosure; fourthly, the Legislature is required to pass laws to execute these provisions, subject to deductions which they may authorize, which deductions, however, shall be uniform in respect to real and personal property. Then there is distinguished from deductions the case of exemptions, which cannot be uniform. You may exempt a homestead for instance, which will apply to real property alone, and not exempt any personal property. You could not make a rule uniform in the case of exemptions of that character, and therefore they are left entirely to the discretion of the Legislature. I believe this provision accomplishes substantially what we are after, and leaves with the Legislature the power which almost all of us agree it is necessary to leave to it.

The PRESIDENT—If there be no objection, this substitute will be received, to be considered after the present amendment is disposed of.

Mr. CHURCH—I have not intended to take any part in this discussion, and should not have done so, if my friend from Rensselaer [Mr. Francis], had not introduced here a letter of Mr. Wells, U. S. Revenue Commissioner, purporting to criticize and refute to some extent the correctness of the report of the Finance Committee on the subject of taxation. The gentleman from Rensselaer [Mr. Francis] says that letter has never been answered and is unanswerable. There has never been any occasion to answer the letter. In the first place it appeared in public on the day before the election, and was put out, as I supposed at that time, and suppose still, as an electioneering document, and it was one therefore which I did not feel called

upon, and I do not suppose any body else did, after the election was over, to attempt to answer or refute. But if any body supposes that there is any thing in that letter which tends in the slightest degree to impair the entire accuracy of the financial report, I can only say that he is entirely mistaken. And any gentleman who will take the trouble to examine this question will see how utterly fallacious the apparent contradictions contained in that letter are. I have not the letter of Mr. Wells before me at this time, and I can only speak of its principal features from information derived from a casual reading. He makes one point against the amount of indebtedness stated by the committee upon this ground. He says that the canal debt is no debt, because there is a provision made to pay it from tolls on the canal. Now, sir, the Finance Committee were endeavoring to show the burdens resting upon the people. They did not undertake to exhibit the assets or the property which was liable for the payment of these debts. But it is a novel idea that because a provision is made to pay a debt that therefore it is no debt; that twenty millions of dollars of canal debt for which the bonds of this State are outstanding and the honor of the people pledged to pay, is no debt, because the people have made a provision that it shall be paid by tolls on the canals. Does not Mr. Wells know, and does not every man who has given this subject the slightest attention know that tolls are a species of taxation?

Mr. FRANCIS—If you owe a debt and have the property to pay it, it is not a burden.

Mr. CHURCH—It is a burden to the extent of the debt. The gentleman might precisely as well say that when he gives his note if he is able to pay it the obligation is discharged, as to say that he does not owe a debt because he has property enough to pay it. The tolls upon the canals are only another species of taxation, and they are regarded generally as a most obnoxious kind of taxation—a taxation upon commerce. It falls in a great degree upon the consumer of the property transported upon your canals. It is not a direct taxation, such as we have provided to pay the bounty debt, but Mr. Wells might just as well say that the bounty debt is no debt against the State because we have made provision for annual taxation to pay it, which provision is irrevocable, being protected by constitutional provision. This particular provision is for direct taxation. The provision to pay the canal debt is by a taxation upon the commerce which floats over the canal. That is the only difference. Now, in relation to the amount of taxes, I say that it was very unfair in Mr. Wells, and an utter misrepresentation on his part, to declare in his letter that the Finance Committee assumed that the assessed valuation of the property was its true valuation. There is no such thing assumed in the report of the Finance Committee. On the contrary, no fair minded man can read that report without seeing that the committee were careful not to state that the assessed valuation was the true valuation of the property. Let us see. We state that the full amount of the assessed valuation of the property of the State is \$1,600,000,000, and we state the total taxation at \$180,000,000. We state that if

that taxation were capitalized it would require the sum of \$3,000,000,000, at six per cent, to pay it, which is \$1,400,000,000 more than the assessed value of the property. Then comes the clause from which the gentleman justifies the charge against the committee.

Mr. FRANCIS—Will the gentleman please to read the last paragraph?

Mr. CHURCH—Certainly; I am going to read that precise paragraph:

"If, therefore, the present amount of taxation is to be regarded as permanent, and cannot be materially reduced, the unwelcome truth must be acknowledged that the property of the State is mortgaged to more than the amount of its full value."

And then if the gentleman had read the next two lines he would have seen, taking it all together, precisely what the committee intended to say: "It is estimated that three and one-half per cent upon the value of property is a liberal allowance for the net profits of the people." The committee assumed that no people are able to pay an amount of taxation beyond the net profits which they make, and which the committee estimated at three and one-half per cent. Estimating the net profits at three and one half per cent upon the full value of the property, calling that value whatever you please—\$3,000,000,000, or \$4,000,000,000, as Mr. Wells calls it—and the whole amount of the tax at \$180,000,000, you have an amount of taxation exceeding the ability of the people to pay. That was the argument of the committee, that the people could not pay a taxation beyond the net profits of the whole people. Those net profits were three and one-half per cent. Then estimating the amount of taxation at \$180,000,000, which they assumed, they argued that this amount of taxation was more than the people of the State of New York could pay. It was therefore very unfair on the part of Mr. Wells, in reviewing this report, to say that the committee assumed that the full value of the property was its assessed value, when they were careful in every single clause of this report to speak of the valuation as an assessed valuation, and not the real valuation. The principal point which Mr. Wells undertakes to make against this report is that we have estimated a larger proportion of the national taxes for this State to pay than the State actually pays. We stated that the State of New York paid one-fifth of the internal revenue of the national government. Mr. Wells says, and that has been the argument of gentlemen in this Convention—

Mr. GRAVES—I rise to a point of order, that this discussion of the letter of Mr. Wells is not germane to the pending amendment.

The PRESIDENT—It is not germane; but the Chair, having permitted the remarks of the gentleman from Rensselaer [Mr. Francis], must permit the reply.

Mr. CHURCH—I am unwilling to trespass upon the Convention by any remarks which are out of order. I supposed this question was open for discussion now, while the subject we are considering is that of taxation, otherwise I should not have alluded to it. Mr. Wells has charged against the committee that we have put too large

a proportion of the national taxation upon the State of New York; and his argument is that because the State of New York has a population of only one-ninth of the total population of the United States, therefore we should say that this State pays only one-ninth of the taxes. True, we have only one-ninth of the total population, and we ought to pay only one-ninth of the taxes; but we do pay, by the system of taxation which has been enacted, a much larger proportion. The system of internal revenue draws from the State of New York an unequal proportion of taxes. That is the reason why I complain of it. It is a system of taxation which makes the State of New York pay an unequal proportion of the national tax. It is no answer to say that New York ought only to pay one-ninth of the taxes because it has but one-ninth of the population, when in point of fact we do pay a much larger sum. We paid in fact one-fourth of the internal revenue tax in 1866. That is the official record. Mr. Wells does not deny it, and he cannot deny it. We have paid one-fourth of the tax. The committee put it down at one-fifth; and why? Because the people of the State of New York manufacture some articles which are sent to other States and which are consumed by other people, who pay the tax. We consume some manufactures that come from other States, also; but taking the two together, it was my opinion that we sent abroad perhaps more manufactured articles than we received and consumed from other States. Therefore the committee made the difference between one-fourth which we actually do pay, and one-fifth; which I say is a liberal allowance, and a larger allowance than I believe ought to be made. It is useless for gentlemen to say that New York has a ninth of the population and therefore ought to pay one-ninth of the taxes when we do pay one-fourth. New York pays doubtless more of the internal revenue tax than ten States of the Union whose population is three times as large as this State. I complain of the system of taxation that it is altogether unjust to the State of New York. The government have put a tax upon sixteen thousand articles. They lay their hands on every thing the people use, wear, eat or drink, and in many cases several times over. The State of New York, is made up of a population that uses these articles to a greater extent than some other people with as much wealth perhaps, but who are engaged in other avocations, and who therefore do not have occasion to use all these articles to the same extent we do. Therefore it is that New York is unequally burdened. But I will not take up the time of the Convention by elaborating this subject. Mr. Wells himself, after he ciphers down the debt by throwing out every thing from it for which a provision has been made to pay, and after he ciphers down the amount of taxation by supposing it to be regulated as it ought to be, in proportion to the population of this State, as compared with the whole United States, still makes out an annual taxation upon the people of the State of New York of \$120,000,000, instead of \$180,000,000 as the committee made it for 1866; and he estimates that the whole value of the property of this State

amounts to \$4,000,000,000. I think that is an extravagant valuation, while I know that the amount of his estimate of taxation is too low. But what I desire is to call the attention of the Convention and of the people of the State to these two items—the one too high, in my judgment, and the other too low—and then I declare that the people of this State are not competent to pay permanently \$120,000,000 of taxation annually. I say they cannot do it for twenty years, because they do not earn it over and above their support. And the remark of the committee, that if this taxation, even as fixed by Mr. Wells, is to be regarded as permanent, the unwelcome truth must be acknowledged that the property of this State is mortgaged for more than its full value, remains confessedly true. The people of the State of New York do not realize in net profits over and above the support of the people and necessary improvements \$120,000,000 that can be applied to the purposes of annual taxation. According to the statement of Mr. Wells himself, therefore (while it may be very agreeable to him as a public officer to make these exactions upon the people), the people of this State cannot pay this amount permanently. The only object which the committee had—and I submit to my friend from Rensselaer [Mr. Francis] that it was a legitimate and commendable object—was that we might apply ourselves to the reduction of taxes. If one-half of the ingenuity which has been expended in attempting to show that the Finance Committee were mistaken in their report, had been exerted in devising some means to reduce taxation, we might hope that our overburdened and overtaxed people would in time find some relief. It is criminal in us to deceive ourselves. It is criminal in us to say that the people are not burdened beyond their means to pay, and to apply no remedy, and not to seek to relieve their burdens in any possible way. These burdens can be reduced. Millions upon millions can be saved which are now expended by extravagant appropriations. We can save millions upon millions in various other ways; and it is useless, and foolish, and criminal to undertake to convince ourselves, or the people, that we are not ground to the earth by unequal and oppressive systems of taxation. I repeat again, and defy contradiction, that the people of New York cannot bear one hundred and twenty millions of annual taxation permanently. It has no power to pay it. It is not a question of choice, it is a question of ability. I beg to say one word to my friend from Onondaga [Mr. Alvord] who has gone into an estimate this morning of the income tax for the purpose of showing that the earnings of the people, as he ciphers them out, are \$320,000,000. If he will reflect a single moment he will see how fallacious is such a result, based upon the amount of the income tax actually paid. In the first place the amount actually expended in the support of the people, is included in that sum, because he has included the \$600 of exemption in addition to the whole amount paid for support. The amount actually expended in the support of the people is no part of the sum from which the people can pay taxes. You must get beyond that sum before the people have any ability to pay taxes. Again, this income tax does

not show the true productive wealth of the State. The gentleman from Onondaga and myself make a little trade in stock. I make \$50,000 and he loses it. Then I have an income to report increased by \$50,000. Who is richer? Nobody but the one who makes the profit by the speculation. Money made by speculation adds not a dollar to the productive wealth of the State, or the ability of the whole people to pay taxes, and it should not enter into the calculation at all when you undertake to find out how much taxation people can pay. It is quite too uncertain and contingent. It is like the two boys who became very rich one morning trading jackets after breaking jail. The incomes are made up to a large degree of speculative gains, which add nothing to the real value of the productive industry of the State.

Mr. OPDYKE—I do not rise to prolong this discussion, but to say—

The PRESIDENT—The Chair must arrest irrelevant debate at this point, and request gentlemen who speak to speak upon the amendment pending.

Mr. ALVORD—I desire to say that I do not think it proper that the remarks of the gentleman from Orleans [Mr. Church] should go unanswered; and will ask if the Chair will not modify that decision.

The PRESIDENT—The Chair has heard one gentleman upon each side, and the point of order having been raised by the gentleman from Herkimer [Mr. Graves], the Chair cannot withdraw his decision. Does the gentleman from Onondaga appeal?

Mr. ALVORD—No, sir, I do not appeal.

Mr. OPDYKE—I ask as a question of privilege, for permission to reply to the charges of misrepresentation, made by the gentleman from Rensselaer [Mr. Francis].

The PRESIDENT—The Chair does not regard it as a question of privilege.

Mr. OPDYKE—Does the Chair decide that when a member has made charges of misrepresentation, I cannot reply?

The PRESIDENT—The Chair does not understand that the gentleman from New York has been charged with misrepresentation. The Chair did not understand the drift of the remarks of the gentleman from Rensselaer [Mr. Francis], until he had nearly concluded. The report of Mr. Wells is in no wise before the Convention.

Mr. OPDYKE—I understood the gentleman from Rensselaer [Mr. Francis] to charge me with misrepresentation, with regard to the statements made by Mr. Wells.

The PRESIDENT—The Chair did not so understand the gentleman from Rensselaer.

Mr. FRANCIS—I will say that I intended to convey no such impression certainly.

Mr. AXTELL—I move the previous question on the amendment of the gentleman from New York [Mr. Opdyke] and the amendment of the gentleman from Essex [Mr. Hale].

The question was put on the motion of Mr. Axtell, and it was declared carried.

The question was then put on the adoption of the substitute of Mr. Hale, and, on a division, it was declared lost by a vote of 36 to 52.

The question recurred on the adoption of the amendment of Mr. Opdyke.

Mr. CHESEBRO—I ask the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY then proceeded to call the ayes and noes, upon the amendment of Mr. Opdyke, and it was declared lost, by the following vote:

Ayes—Messrs. Baker, Ballard, Barto, Bergen, E. Brooks, W. C. Brown, Cassidy, Chesebro, Church, Clarke, Curning, Francis, Gould, Hale, Harris, Hatch, Kinney, Landon, Livingston, Lowrey, Mattice, Miller, Monell, Murphy, Opdyke, A. J. Parker, Root, Roy, Silvester, Smith, Stratton, Tappen, S. Townsend, Wakeman, Wickham—35.

Noes—Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Barker, Beadle, Beala, Beckwith, Bell, Bickford, Bowen, E. P. Brooks, E. A. Brown, Case, Cheritree, Cochran, Comstock, Corbett, Curtis, Duganne, C. G. Dwight, Eddy, Farnum, Ferry, Fowler, Fuller, Fullerton, Graves, Hadley, Hammond, Hand, Hardenburgh, Hiscock, Hitchcock, Houston, Krum, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Pond, Potter, President, Prindle, Rathbun, Reynolds, Rumsey, Seaver, Spencer, M. I. Townsend, Van Campen, Van Cott, Wales—58.

Mr. E. BROOKS—I offer the following as an amendment.

The PRESIDENT—The Chair would suggest that the question must first be taken upon the substitute of the gentleman from Kings [Mr. Van Cott], that having been received by the consent of the Convention.

Mr. E. BROOKS—I move this then as an amendment to the amendment.

Mr. GRAVES—Does the previous question apply to this?

The PRESIDENT—It does not; it simply applies to the amendment of the gentleman from Essex [Mr. Hale].

Mr. GRAVES—I move the previous question.

The question was put on the motion of Mr. Graves, and it was declared lost.

The SECRETARY read the amendment (by way of substitute) of Mr. E. Brooks as follows:

ARTICLE —.

SECTION —. The Governor shall appoint three State assessors, with the consent of the Senate, whose duty it shall be to equalize the assessment or valuation of the real estate in the respective counties, and to hear and determine appeals from the boards of county assessors, under such regulations as the Legislature shall from time to time prescribe.

§ —. The State assessors shall appoint three county assessors, in each of the counties of the State, who shall have power, subject to regulation by law, to equalize the valuation of the real estate in the several towns and districts of their respective counties, and to hear and determine appeals from the decision of the town or district assessors in such counties.

§ —. There shall be, in each of the towns and tax districts of the State, three town or district assessors, to be appointed by the county assessors of the respective counties, whose duty

it shall be, under legislative direction, to assess the real and personal estate in their respective towns and districts, for the purpose of taxation. All property, whether real or personal, not by law exempt from taxation, shall be assessed at its fair cash value.

§ —. All *bona fide* debts may be deducted from the aggregate value of such personal estate before assessment, but the amount assessed shall in no case exceed the value of the property liable to taxation.

§ —. All the officers named in this article shall hold their offices during the pleasure of the powers appointing them respectively; and their compensation shall be provided for by the Legislature. All vacancies occurring by removal or otherwise, shall be filled by the powers making the original appointment.

Mr. E. BROOKS—I do not propose to occupy the time of the Convention in explaining what is so clear upon the face of the paper now presented. It has been said over and over again that the remedy for improper taxation lies within the Legislature. If there is any fault in regard to the proper imposition of taxes, it arises from an improper discharge of duty on the part of the assessors. The provision which I have now submitted, and which has undergone the consideration of several members of this Convention, and met with their approval (indeed, I might say it was one which was under discussion before the Committee on Finance, and met, at one time, with the approval of a large number of that committee), proposes there shall be three State assessors appointed by the Governor; that they shall have power to appoint assessors for the counties, and superintendents to supervise that work, and the whole shall be under the direction of the Legislature. I stated, the other day, in regard to my own county, that the assessors at one time put a million of dollars of taxes on that county, and at another time removed it. The gentleman from Onondaga [Mr. Alvord] stated this morning that twelve millions of dollars were added to the taxes of one of the counties of this State, which, in his judgment, was not a sum corresponding relatively with the property in his own county. It seems to me the proper remedy for what is a great grievance lies just here: in the proper appointment of the assessors generally for the State, and local assessors for the several towns and counties. So far as I am concerned, there is no disposition on the part of the gentlemen representing the city of New York or the sea-board counties to obtain any advantages over gentlemen representing the rural districts. When the gentleman from Broome [Mr. Hand] intimated this morning that it might be no great calamity to the State if the city of New York were struck out of existence, in my judgment, he reflected much more upon himself than he did upon the inhabitants of that great commonwealth and the municipal emporium of this State. Sir, there may be reasons why the gentleman, feeling as he does at the present time, should think it proper to cast such reflections upon one part of the State; but in my judgment ill temper has nothing to do with the merits of the question. For one, I am not disposed to reply to such re-

marks. I believe the property of the State ought to be, as it has been suggested, equitably and justly taxed. I do not believe it is just to tax debts, as I have said already. We should tax what a man owns, and not what he owes; especially we should not tax the credit of the State. With these remarks I am content to leave the question. However, I will make but a single remark more and then resume my seat. It was said by the gentleman from Onondaga [Mr. Alvord] this morning, and intimated by him previously last evening, that the taxes in this State are imposed mainly upon the farming interests. The gentleman from Broome [Mr. Hand] makes the same allusion. Sir, I recognize the power of agriculture, its influence, and the high-toned character of the great body of men engaged in that calling; but let me say to them that agriculture is pre-eminently a part of the commercial interests of the State and county. To what advantage is it that you raise thousands and thousands of bushels of grain and corn, and the various products of the soil, if you do not find a market for them upon the sea-board? Sir, would the gentleman have the farmers of this State situated as are the farmers of the great North-west, where hundreds upon hundreds, year after year, for a long while past, owing to a lack of commercial facilities to the sea-board, have been obliged to use their corn for fuel, or sell it for six cents a bushel? Sir, what is the difference between agriculture there and the agriculture here, but the ability to transport its products to the sea-board and make them a part of the great commerce of the State? One word more in regard to the farms of this State. I have authority for saying, and I am sure every gentleman acquainted with the subject knows the truth of what I say, that there are thousands and thousands of acres of land in the State taxed not more than thirty or forty dollars per acre, for which the owners would not take one hundred or even two hundred dollars per acre. This shows that in regard to questions of this kind the agricultural interests are quite as much favored as the commercial interests of the sea-board.

Mr. CURTIS—I move the previous question on the substitute.

The question was put on the motion of Mr. Curtis, and it was declared carried.

The question was then put on the substitute of Mr. E. Brooks, and it was declared lost.

Mr. SPENCER—I move to amend the substitute of the gentleman from Kings [Mr. Van Cott] by striking out the words "possess or hold." I offer this amendment for the purpose of calling the attention of the Convention to the very great injustice and inequality which will result in the adoption of the principle embodied in that language. It is a principle of the common law which has been embodied in the legislation and the jurisprudence, not only of this State, but of other States in the Union, that the law in regard to personal property is governed by the domicile of its owner. The principle has hitherto been applied as well to taxation as to every other question concerning personal property. It governs the law of descent, and the law of distribution of property, and there is no other principle by which the law

can be administered in regard to personal property, whether in respect to taxation or otherwise, which shall be equal and just. For the purpose of illustration, I call the attention of the Convention to the fact that this provision, as well as that of the gentleman from Chautauqua [Mr. Allen] which has been adopted, requires the assessment of the personal property to the owner of the property domiciled in this State, wherever the property may be. If the gentleman from Kings [Mr. Van Cott] is the owner of personal property which happens to be for the time being located in the State of New Jersey, or in the State of Pennsylvania, he is liable under the provisions of this principle to be assessed for that property. Yet, if a person, belonging in the State of New Jersey, or in the State of Pennsylvania, and domiciled there, has property which for the time being happens to be located or employed in business in this State, it is liable to be assessed and taxed to him here. So that if the State of New Jersey, or the State of Pennsylvania shall adopt the same principle in regard to the assessment and taxation of personal property which shall be adopted here, then every individual, whether in either of these States, or in this State, who has personal property located in the other, may be liable to be assessed upon his property twice. That is the injustice and the inequality to which this proposition leads.

Mr. VAN COTT—I think the expression objected to has been misconceived. It does not furnish a rule of taxation. It does not require property belonging to another to be taxed to the possessor. A is in possession of property; he is the apparent owner in contemplation of law, the owner in possession, having the badge of ownership. This substitute requires a sworn statement of property owned and possessed and held by him. If he possesses and holds property which is not his own, he discloses the fact that it is not his own, and that the ownership is in another. If you strike out the expression "possess or hold," as the gentleman from Steuben [Mr. Spencer] desires, although he may be in possession of a large amount of property, the title may nominally be in the wife, in the brother or the son. If it is set forth in the schedule that the property belongs to another, it will always disclose the true owner; and then it will be taxed as it ought to be. That is the object of the substitute.

Mr. AXTELL—I move the previous question on the amendment of the gentleman from Steuben [Mr. Spencer].

The question was put on the motion of Mr. Axtell, and it was declared carried.

The question was then put on the amendment of Mr. Spencer, and it was declared lost.

Mr. BARTO—I offer the following amendment to the substitute of the gentleman from Kings [Mr. Van Cott].

The SECRETARY read the amendment as follows: "And no property shall be exempt from taxation on the ground of the profession or calling of the owner thereof."

Mr. AXTELL—I have not hitherto made any remarks in relation to this subject of taxation, but I must be allowed to say, that I quite agree

with the purpose contemplated by the amendment of the gentleman from Tompkins [Mr. Barto]. I shall myself cordially vote for that amendment, because I think that any laws which recognize any class of gentlemen or persons as paupers are unfortunate and degrading to the persons so sought to be favored. I move the previous question on the section.

The question was put on the motion to order the previous question, and it was declared carried.

A DELEGATE—I call for the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered, and the amendment was declared lost by the following vote:

Ayes—Messrs. N. M. Allen, Alvord, Archer, Axtell, Ballard, Barto, Beala, Bergen, Bickford, Bowen, Carpenter, Case, Cassidy, Cheritree, Chesebro, Church, Duganne, Farnum, Ferry, Field, Francis, Fuller, Graves, Hadley, Hand, Hardenburgh, Harris, Hatch, Hitchcock, Kinney, Landon, M. H. Lawrence, Livingston, Lowrey, Mattice, McDonald, Monell, A. J. Parker, Potter, Rathbun, Reynolds, Stratton, Tappen, M. I. Townsend, S. Townsend, Wales, Young—47.

Noes—Messrs. A. F. Allen, Andrews, Armstrong, Baker, Barker, Beadle, Beckwith, Bell, E. Brooks, E. P. Brooks, E. A. Brown, W. C. Brown, Clarke, Cochran, Comstock, Cooke, Corbett, Corning, Curtis, C. O. Dwight, Eddy, Fullerton, Gould, Hale, Hammond, Hiseock, Houston, Krum, A. Lawrence, Lea, Ludington, Merrill, Miller, Murphy, Pond, President, Prindle, Root, Rumsey, Seaver, Silvester, Smith, Spencer, Van Campen, Van Cott, Wakeman, Wickham—47.

Mr. BICKFORD—I move to reconsider the vote just taken.

The PRESIDENT—That motion will lie on the table under the rule. The question is now on the adoption of the substitute of the gentleman from Kings [Mr. Van Cott] for the original amendment offered by the gentleman from Chautauqua [Mr. A. F. Allen.]

Mr. BERGEN—I call for the ayes and noes. A sufficient number recording the call, the ayes and noes were ordered.

The SECRETARY proceeded with the calling of the roll. The name of Mr. Murphy was called.

Mr. MURPHY—I wish to inquire what will be the effect of the adoption of this proposition? Will it be considered an amendment to the section already adopted?

The PRESIDENT—It will take the place of the section already adopted.

Mr. MURPHY—Will there be another vote taken to get the sense of this Convention as to the proposition?

The PRESIDENT—In the opinion of the Chair another vote will not be required. If adopted this will stand as the section, having been moved as a substitute for it.

Mr. MURPHY—I was in favor of this amendment as against the others, but I am against any provision at all in the Constitution in regard to this, and therefore I shall vote "no."

The name of Mr. Opdyke was called.

Mr. OPDYKE—For the reasons stated by the gentleman from Kings [Mr. Murphy] I shall vote "no."

The name of Mr. Spencer was called.

Mr. SPENCER—Upon the statement given by the Chair as to the effect of this vote, I vote "no."

The name of Mr. Barto was called.

Mr. BARTO—For the reasons stated by the gentleman from Kings [Mr. Murphy], I vote "no."

The amendment was declared adopted by the following vote:

Ayes—Messrs. A. F. Allen, N. M. Allen, Alvord, Archer, Armstrong, Axtell, Baker, Ballard, Beadle, Beale, Beckwith, Bickford, Bowen, E. P. Brooks, E. A. Brown, W. C. Brown, Carpenter, Case, Church, Clarke, Cochran, Corbett, Curtis, Duganne, Eddy, Farnum, Ferry, Field, Francis, Fuller, Graves, Hadley, Hammond, Hand, Harris, Hatch, Hitchcock, Houston, Kinney, Krum, Landon, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Miller, Monell, Pond, Potter, President, Prindle, Rathbun, Reynolds, Root, Rumsey, Smith, Stratton, Tappen, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Wakeman—65.

Noes—Messrs. Andrews, Barker, Barto, Bell, Bergen, E. Brooks, Cassidy, Cheritree, Chesebro, Comstock, Cooke, Corning, C. C. Dwight, Fullerton, Gould, Hale, Hardenburgh, Hiscock, Livingston, Lowrey, Mattice, Murphy, Opdyke, A. J. Parker, Seaver, Silvester, Spencer, Wales, Wickham, Young—30.

Mr. SILVESTER—I move to reconsider the vote just taken.

The PRESIDENT—That motion will lie on the table.

Mr. BICKFORD—I offer the following as a new section.

The SECRETARY read the amendment, as follows:

Sec. —. Provision shall be made by law for the assessment, at its full cash value, of all property in the State, not *in transitu*, whether exempted from taxation or not; and all State taxes shall be apportioned among the several counties of the State, according to the full cash value of all the property situated therein, including property owned by the State, by counties, towns, cities, and villages.

Mr. BICKFORD—The effect of this section will be to cause an assessment of all the property in the State, whether it is exempted from taxation or not. It is well known that there is a great amount of property exempt in the State, such as churches, colleges, academies, hospitals, the State Capitol, State Hall, City Hall, Normal School, Albany Medical College, the canals of the State, and a vast amount of property belonging to counties, towns, cities and villages. My object is, that all this property shall be assessed, shall come into the assessment of the State, and that the State taxes shall be apportioned among the several counties of the State, according to that assessment, no matter what particular items of property may be exempt. The consequence will be, that in those counties where public property so exempt is located, the assessment will be swelled up and be larger than it otherwise would be, and therefore the taxes in the counties where there is no such property will be lighter, as they should be. For instance, in this county of Albany, where the public buildings

belonging to the State are located, it is an advantage to the people of the county to have those buildings here, and they should appear on the assessment roll, and the tax of Albany county should be so much larger for that reason. There is equity in such a provision. Now, if you wish to exempt churches, I have nothing to say against that; I am willing you may exempt places of worship, school-houses, colleges, academies, etc., from taxation; but in every place where there is such a building it is an advantage to the locality. Property is worth more in that locality by reason of its being there, and therefore the tax should be larger on that account. I submit that this proposition is pre-eminently equitable, and ought to meet with the favorable consideration of the Convention.

Mr. AXTELL—I move the previous question.

The question was put on the motion of Mr. Axtell, and it was declared carried.

The question was then put on the amendment offered by Mr. Bickford, and it was declared lost.

Mr. BARTO—I wish to offer the following as an additional section.

The SECRETARY read the amendment as follows:

Sec. —. The principal and interest of the general fund debt and the canal debt under the amendment of 1854, and the floating canal debt and all indebtedness hereafter created shall be paid in coin.

Mr. BARTO—I ask the ayes and noes on the adoption of this section.

A sufficient number not seconding the call, the ayes and noes were not ordered.

The question was put on the amendment offered by Mr. Barto, and it was declared lost.

Mr. ANDREWS—I offer the following as a new section.

The SECRETARY read the section as follows:

Sec. —. The Comptroller is authorized to renew the bounty debt or any part thereof by extending the time of its payment to the 1st day of October, A. D. 1886, and to issue stock for that purpose, which he may apply in exchange for the outstanding stock, or he may sell the same in the usual manner; and, in case of sale, the proceeds thereof shall be applied to the purchase of the outstanding stock. The stock so to be issued shall not bear interest to exceed seven per cent per annum, payable semi-annually, and shall be exchanged or negotiated on the best possible terms, and in no event at less than par, nor at a lower rate than the outstanding stock can be purchased for at the time the sale or exchange shall be effected. The principal and interest of the stock hereby authorized to be issued shall be secured by a direct annual tax to pay, and sufficient to pay, the interest on said stock as it falls due, and also to pay and discharge the principal thereof within eighteen years from October 1st, A. D. 1868. The Legislature may appropriate from time to time to the payment of the principal or interest of said stock any fund of the State not otherwise appropriated, and, in case of such appropriation, the tax to supply the sinking fund shall be correspondingly reduced.

Mr. ANDREWS—I will briefly state the object of this proposed section. It will be recollected

that we have what is called a "bounty debt," contracted under the laws of 1865, which amounted at that time to \$30,000,000. It was contracted under a law, submitted to the people for approval, pursuant to the Constitution, and by the terms of the law the debt was payable in twelve annual installments from April, 1865. Two installments of that debt have been paid, leaving now the principal of the debt, in all \$25,000,000. By the terms of the law there is collected annually by taxation for the payment upon the principal of that debt \$2,500,000, together with interest upon the whole sum, and the whole debt will mature within nine years from April, 1868. It will be recollected by the committee that the revenues of the State arising from the canals, to the extent of \$2,418,000 annually, have been, by the arrangement proposed by this Convention, appropriated to the payment of the debt of \$21,000,000 owing by the State, and the surplus revenues of the canals are to be applied to the improvement of the canals. It is supposed that within ten years the debt of \$21,000,000 will have been paid. Until that debt shall have been paid there will be no resources of the State to apply to the payment of the bounty debt, except such as are supplied by taxation. This section which I have proposed provides that the Comptroller may renew the bounty debt by extending its payment until eighteen years from the 1st day of October, 1868, thereby reducing the annual amount of the principal falling due upon the debt from \$2,500,000 to \$1,250,000. And it provides that, for the purpose of securing the new stock to be issued to take the place of the stock now outstanding for the bounty debt, a sinking fund shall be provided by annual taxation each year sufficient to pay the interest falling due in any year, and to extinguish the principal debt within eighteen years from October 1, 1868. If this section shall be adopted, the effect of it will be that, in the mean time, until the payment of the \$21,000,000, the State tax for the principal of the bounty debt will be annually reduced \$1,250,000, and when the canal debt shall have been paid, at the expiration of eight or ten years, it will leave the State in the receipt of sufficient annual revenues to appropriate to the payment of the subsequent installments which shall fall due on the bounty debt, and thus relieve the State from annual taxation for that purpose. But it is left to the Legislature to determine whether or not, after the twenty-one millions shall have been paid, it will or will not apply the surplus revenues to the payment of the remainder of the bounty debt. It seems to me, Mr. President, that it would be policy for us, in the present condition of affairs, to provide for limiting taxation to the lowest practicable point, and to leave it to the Legislature, when the State shall be able, to provide out of the revenues of the State for the payments of its debts, thus relieving the State from taxation for that purpose.

Mr. CHURCH—I hope this amendment will be adopted. The same provisions are contained in the article reported by the Finance Committee in relation to the extension of this loan, with this single exception. The provision reported by the committee made it imperative upon the Legisla-

ture to appropriate the taxes to be returned to the treasury from the canals for the payment of this debt, while this provision leaves it discretionary in the Legislature to do so or not. There is another incidental advantage in the extension of this loan to eighteen years, not mentioned by the gentleman from Onondaga [Mr. Andrews]. The debt is now due in about nine years, and is drawing interest at seven per cent, a higher rate of interest than this State has paid hitherto. I suppose that if you extend it to eighteen years, you may make the rate of interest six per cent. A loan of eighteen years being regarded by capitalists so much more favorably than a loan of twelve years.

Mr. S. TOWNSEND—I should like to inquire of either or both the gentlemen, how the capitalists or the poor individuals holding the loan will accept this proposition. I am aware that by a constitutional amendment you can do almost any thing, but still the Legislature will actually have the power that we are assuming here.

Mr. CHURCH—it is not obligatory upon the holders of these bonds to exchange them; it is entirely discretionary.

Mr. S. TOWNSEND—Then the gentleman's amendment may after all fail of its object.

Mr. CHURCH—It may, if the Comptroller is unable to deal with the parties.

Mr. S. TOWNSEND—I prefer to leave the matter where it rests, between the borrower and lender. The change that this proposition would effect, would be but about a quarter of a mill a year in the taxation, and I think this entirely too insignificant a sum for which to disturb the relations which already exist between the parties to this loan. I know personally there was very great difficulty at its incipency in getting parties to take the loan, and I do not think it is wise now to make any such change in regard to it, as this article proposes.

Mr. ALVORD—How does the gentleman make it appear that \$1,250,000 on an assessment of \$1,600,000,000 would be only a quarter of a mill?

Mr. S. TOWNSEND—But the gentleman himself has said here that the reformed assessment will bring it up to \$10,000,000,000. However, gentlemen may believe in that extravagant sum, I think that it can be carried equitably to three thousand millions, and then an assessment of a quarter or at most a half of a mill will govern the whole matter.

Mr. HATCH—I shall vote for the proposition of the gentleman from Onondaga [Mr. Andrews], but I do not want to be understood, when I vote for it, as recognizing any indebtedness from the canals to the State beyond the payment of the \$21,000,000. I do not propose to revive this question about the eighteen millions again. We have had enough discussion on that; but I do not want to be misunderstood in the vote that I give, and I presume that other gentlemen in the Convention will not want their vote on the subject construed as giving any recognition to any indebtedness from the canals to the State, beyond the payment of the \$21,000,000.

The question was put on the amendment offered by Mr. Andrews, and it was declared adopted.

Mr. BARTO—I move a reconsideration of the vote by which the amendment offered by me was lost.

The PRESIDENT.—That resolution will lie on the table under the rule.

Mr. GOULD—I offer the following amendment.

The SECRETARY read the amendment offered by Mr. Gould, as follows:

SEC. — The Legislature shall at its first session after the adoption of this Constitution, provide for the appointment of a commission consisting of three persons, who, by previous study and experience, are well qualified to investigate all matters connected with the subject of taxation, and whose duty it shall be to prepare a system of taxation which shall be just and equal, for the consideration of the Legislature.

Mr. GOULD—The subject of taxation has always been the opprobrium of the Legislature. There have been more complaints in relation to legislation upon that subject, than on any other subject that has been brought under the attention of the Legislature, and the reason is that the objects of taxation ramify so intricately into the various businesses and relations of life, that it is exceedingly difficult when a general rule of taxation is adopted to know where it is going to strike, and what its operation will be. We know, sir, that it has been complained of upon this floor; that year after year the Legislature has been pressed upon by petitions from the people to make a more uniform system of taxation than has hitherto obtained. But that the Legislature has failed to comply with the prayers of those petitioners on the ground that they have not had time enough adequately to consider the subject and prepare such a system of taxation as should be general and equal. I think every one who has listened to the debates here upon this floor must have been struck with the want of fullness of information, on the part of those who have participated in these discussions. While we all have desired to make provisions which should be just and equal, yet almost all of us differ as to the definition of equality. Nearly every gentleman who has spoken has had some plan, some panacea, which in his opinion would be just and equal, and yet when other gentlemen have spoken they have discovered that under the garb of a rigid equality there would be the grossest injustice perpetrated upon certain portions of the people of this State. It seems to me that we cannot in any way arrive at any intelligent solution of these questions unless they are referred to a board of men who by previous experience and thorough familiarity with the business, and with the various interests of the people of this State and who will be enabled to know the precise influence and effect of every legislative enactment which they may propose.

Mr. S. TOWNSEND—Will the gentleman permit me to ask him a question?

Mr. GOULD—Yes, sir.

Mr. S. TOWNSEND—I see that the idea of such a board appears to be a favorite one in the Convention. I want to know whether the gentleman in making this proposition did not overlook the fact that we have had a board of well paid gentlemen examining this very question ever since the year 1850. This matter, sir, has to be settled

here in this body where we have, I trust, actual ability. [Laughter.]

Mr. GOULD—The board of assessors have an entirely different object in view. They never were intended to propose a specific law for the regulation of taxation. This is an entirely different matter, and it seems to me a question of very great importance. Now, gentlemen will perceive that under a rigid application of the rules which seem to find favor here, it is very possible that some of the most important manufactures in the State may be taxed out of existence. I have known the profits of a manufacturer to be destroyed for a whole month simply by the introduction of a barrel of bad oil for the lubrication of the machinery. The profits of our manufacturers are very small upon a yard of cloth or a pound of iron, almost infinitesimally small, and yet in consequence of the greatness of the aggregate, large profits are frequently obtained. But there are manufactures which we all desire to perpetuate here amongst us, yet which may be actually taxed out of existence under a rigid rule such as some gentlemen have favored here, and there must be, in my opinion, considerable latitude allowed to the Legislature in these matters, unless we wish to see these manufactures destroyed. Suppose, for instance, it was desirable to establish silk factories, and it should be found practicable to do so, if the power of taxing them was suspended for five years, would not every tax payer in the State be perfectly willing that that apparent inequality should be introduced for that time, for the purpose of obtaining and firmly establishing a manufacture of so great importance amongst us? There are various other cases of this kind that will require to be met by legislation, and which cannot be properly dealt with under any rigid rule. Why, sir, I may say that nearly the whole of the spinning machinery that is used in this State is manufactured in the States of Connecticut and Massachusetts, and that a large proportion of the locomotives used in this State are made in Massachusetts and New Jersey, and the reason why we do not manufacture our own spinning machinery, and our own turning lathes, is that the system of taxation in those States has been so arranged that the manufacturers of those kinds of machinery are able to make them on better terms than we can make them here. I do not design to follow out these views into details at this time, but I do trust that this Convention will be very careful that we are not led by the name of equality into making provisions which will in fact introduce the grossest inequality into the business affairs of the State.

The question was put on the amendment offered by Mr. Gould, and it was declared lost.

Mr. DUGANNE—I offer the following as a new section.

The SECRETARY read the amendment offered by Mr. Duganne as follows:

"Leased or rented real estate shall be assessed at not less than eight times the annual rental thereof. Actual annual income accruing by interest on United States securities may be assessed by special law. Taxable personal property shall be ascertained and defined by law."

The question was put on the amendment offered by Mr. Duganne, and it was declared lost.

MR. S. TOWNSEND—I offer the following as an additional section. I will say to the Convention that it is one upon which the members have already voted on in Committee of the Whole.

The SECRETARY read the amendment offered by Mr. S. Townsend, as follows:

“Taxation for State purposes shall be imposed upon the several counties in the proportion that the number of inhabitants therein bears severally to the entire population of the State.”

MR. S. TOWNSEND—The gentleman from New York [Mr. Opdyke] has incidentally stated on this floor, that his own investigations had led him to similar conclusions as to the rule of property and population being in striking coincidence as between the several counties of our State—a homogeneity of occupations and pursuits within those districts being a feature of our commonwealth, geographically and statistically expanded as it may be. I hope to have his support to the measure just indicated. The peculiarities of our people are such that population and property run in much closer parallels in our State than one without investigation and examination in the matter would suppose. Where we have the concentrated capital of the State, as in Buffalo, Brooklyn, New York and Albany, we also have a concentration of shiftless pauper populations that are not directly represented on the tax roll; while in the rural interior of the State, where there is no excess of such population, the people at the same time feel the absence of aggregated capital to a much greater degree than in the cities, but almost every person who is of age is there represented on the tax roll by some species of property. This idea applied and worked out would supply perhaps the easiest, simplest and most equitable guide for the apportionment of taxation as between the several counties of our State. But we see now, after a much fuller discussion than it appeared at one time the Convention were willing to give this subject, the great difficulty that surrounds the entire question of assessment—a difficulty which may, perhaps, be still involved in the amendment which I offer, because I do not undertake to say that amendment removes it. Suppose an individual owes on his farm or store, which is worth ten thousand dollars, half that amount to a person in New Jersey: he deducts the amount that he owes from the value of his farm, and is taxed for one-half the value of the farm. Now, by what process can we recover from the resident of New Jersey or Connecticut our taxation on that five thousand dollars? It is possible that some provision might be made to meet that difficulty, but I apprehend it would not be easy to make such a provision. Again, to return to the plan now proposed, it may be, that in order to relieve our people from the injustice, espionage, and irregularities of national taxation, as so fully brought out in our debates, we shall fall back upon this serious and growing difficulty that now embarrasses our national councils. And thus it may be that the time will arrive, and that soon, when the State of New York may well demand an as-

sertion of that principle, and ask, that only according to her representation in Congress, she shall be required to respond to the national expenditure or taxation. The adoption of this principle may have a healthy influence in preventing the too hasty application for admission as States of this Union by some of those communities of only forty or fifty thousand that lie somewhere midway between Idaho and the Rocky mountains, when they find that by coming in, their taxation will be in proportion to their representation, their number of Senators being equal to ours, they may be retarded from seeking admission until they have acquired more population, and more of the solidity that should be characteristic of a State of this Union. I simply throw out these suggestions to show that the principle or proposition is one that this Convention might well entertain—that population and property, in our State at least, go *pari passu*, hand in hand; and if taxation be levied upon the people in this way, it will greatly relieve some dozen or more counties, for instance, the counties of New York, Kings, Ontario, Dutchess, Columbia, etc., because their assessors approximate nearer to their honest duties in the assessment of property, than those of the other delinquent counties of the State. I say this because gentleman here several of them, seated on the other side of the house, representing agricultural districts, have stated without, too, any apparent reluctance, that in their own counties it is not the custom of the assessor to assess property at more than one-fifth its value; while I can say, from my own experience, that that rule is not followed in my county, the county of Kings, or in the county of New York. I have some property in the city of New York, in the fifteenth ward, well located, too, that within six years has been offered to the assessors at the price at which they insisted it should be assessed.

The question was put on the amendment of Mr. S. Townsend and it was declared lost.

MR. CHURCH—I demand the previous question on the article.

MR. SILVESTER—I ask the gentleman to withdraw his demand.

MR. ALVORD—I ask the gentleman not to press the previous question. There are many members here who may desire to speak upon this question.

MR. SILVESTER—I offer the following as an amendment:

“The Legislature shall, at the first session thereof, after the adoption of this Constitution, provide by general law, for the taxation of real and personal property.”

MR. A. J. PARKER—I wish to say, in regard to that amendment, that I hope it may meet with the favor of this Convention. I am satisfied that, if the course we have been pursuing in regard to this subject of taxation be persisted in, it will defeat the Constitution when it is submitted to the people, by more than a hundred thousand votes. You propose now to incorporate into the Constitution an inquisitorial system to which the people will never submit.

The PRESIDENT—The Chair must interrupt the gentleman from Albany. This amend-

ment cannot be received; it is in direct opposition to the action of the Convention this morning.

Mr. SILVESTER—Can it not be received under the head of general amendments?

The PRESIDENT—No, sir; not being germane to the subject or to any part of it.

Mr. ALVORD—I call up my motion in reference to the eighth section of the report for a reconsideration of the vote by which the proposition of the gentleman from Orleans [Mr. Church] was passed by way of substitute for the proposition which had been offered by myself, and adopted in Committee of the Whole. I will state, for the information of the Convention, the exact substance of that proposition. My proposition authorized the Legislature of the State in no case to give or lend the credit of the State, but proposed that, in case it had money or property to give away, it might give it upon a two-thirds vote. That proposition passed in Committee of the Whole. The proposition of the gentleman from Orleans [Mr. Church], which took its place in the Convention, was that the power of the Legislature should be confined strictly and exclusively to appropriations for educational purposes, and for charities, cutting off the power on their part to grant any aid or relief in any way to any individual, association or corporation by any vote. Now, I do not desire to argue this question at any length, because it has been gone over again and again in various forms throughout the entire proceedings of this Convention. I simply wish to say—and in saying it I repeat what I have said before—that at no time in the history of this State has there ever been a grant to a railroad that has received eighty-six votes in the affirmative in the House and twenty-two in the Senate. It was with the greatest difficulty in the world, and only with all the efforts of log-rolling, that they were able, in the memorable years of 1865-6, to get a majority in both houses of the Legislature. There may be cases occasionally—and I think there was one, the case of the Albany and Susquehanna railroad—where the aid of the State can be generally extended with benefit and advantage to the people at large. And when those cases do arise, the representatives of the people, the Legislature, should be able to extend the necessary aid to such enterprises; and I trust that this Convention will not submit to the people for their adoption a proposition cutting off the Legislature from doing this. I doubt very much whether we can do this with any chance of its obtaining the sanction of the people in those portions of the State which have not heretofore enjoyed the benefit of grants made by the Legislature, and I hope that we will not do it. Although the canals are, in the widest sense, a great public improvement, yet to us who reside upon the line of them they have been of incalculable benefit locally; and we are now about to pay back to the State not only the amount which the canals originally cost, which has been expressed by bonds, but also the amount which has been got from the people by taxation and advanced to the canals; we are about to put that back into the treasury; and the men of St. Lawrence, of Jefferson, and other counties remote

from the line of the canals, although they have never derived the direct benefits of those improvements from day to day, have helped to pay that tax; and now I say that if the Legislature, two-thirds of the members of each house, think it right that the people of those localities should have this money which we return into the treasury appropriated in aid of public works which shall more directly benefit them, we should permit the Legislature to make such appropriations. I trust, therefore, that the motion to reconsider will prevail.

Mr. BICKFORD—The proposition of the gentleman from Orleans [Mr. Church] was sprung unexpectedly on the Convention and adopted under the operation of the previous question, no opportunity being given to discuss it. Now, sir, I hope the whole discussion of the financial article—

The hour of two o'clock having arrived, the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock, and resumed the consideration of the report of the Committee of the Whole on the report of the Committee on the Finances of the State, on which Mr. Bickford was entitled to the floor.

Mr. BICKFORD—Mr. President, while the report of the Committee on Finance was under consideration in Committee of the Whole, the question of giving away the property or money of the State in aid of individuals or corporations, and particularly in aid of railroads or railroad corporations, was a great deal discussed, and finally a compromise, moved by the gentleman from Onondaga [Mr. Alvord], seemed to be agreed upon, in effect that the credit of the State should not in any manner be given or loaned in aid of any individual or corporation, and that no money or property of the State should be given to any individual, association or corporation, except on a vote of two-thirds of the members elected to each branch of the Legislature. That compromise, I say, seemed to be agreed upon, and, as I understood it, with the acquiescence of the gentleman from Orleans [Mr. Church]; but afterward, when we got into Convention, under the operation of the previous question, he moved an amendment which passed as a substitute for what had been adopted in Committee of the Whole. That substitute took me and others by surprise, and it was passed, as I said before, without discussion. During the whole progress of the discussion on the financial article I adhered to that portion of the report of the Finance Committee which provided that the \$18,000,000 which had been raised by taxation on the property of the State and given in aid of the canals, should be returned to the treasury; and the gentleman from Orleans [Mr. Church], and those who acted with him, held out assurances that when that money should be returned from the revenues of the canals to the treasury, it should be at the disposal of the Legislature, and might be by them applied either to the improvement of the canals, or for educational purposes, or to pay the bounty debt, or in aid of railroads in portions of the State where railroads were needed,

and where it would be proper for the State to aid in their construction. Such was the word of promise which he "held to the ear," but he subsequently "broke it to the hope." I "sucked the honey of his music vows," supposing of course that they would be kept, and so I was entirely surprised when he turned round, all of a sudden, and moved the section which was adopted as a substitute, namely, that no money or property of the State (which of course would include the money returned to the treasury from the canal revenues) should be given in aid of any individual, association or corporation, except for charitable or educational purposes, thus cutting off all possibility of what he had before promised, that we from the remote portions of the State should have a chance to go to the Legislature and ask such aid as we might require and deserve. It seems to me that the gentleman should not have done this, and that we, living in remote parts of the State, away from the Erie canal, who have been taxed for the benefit of the canal system without ever having derived any direct benefit from it, or any aid from the State, when this money was refunded to the State treasury, had some sort of equitable claim upon it, and that we should not be cut off from all chance of obtaining any portion of it. I insist that the Legislature should be allowed to appropriate that money for such purposes as they may think fit. The course taken by the gentleman in regard to this matter, seemed to me hard, and it seems so now. If this amendment is to be retained, which was adopted by a small majority, the effect will be that the State is to do nothing to aid the construction of railroads in any part of the State, unless it assumes to build them altogether itself; unless it goes into the business of making railroads, and holds them as its property. Now, sir, I would not advocate, and the gentleman from Orleans [Mr. Church] would not advocate, and probably no gentleman in this Convention would advocate this; but the resources of certain portions of the State need to be developed, and ought to be developed, and the cheapest, wisest and most proper way to develop them is by giving timely aid to railroad corporations. When such a corporation is formed, and it has got all the subscriptions it can get, and has got the towns to bond themselves as much as they will, and they still lack a little of sufficient to build the road, then the State should be allowed to come in with its timely aid, when its treasury is full, particularly when it is filled with the money which is returned by the canals in payment of what was formerly advanced to them, by taxation. I see nothing inequitable, nothing wrong in this; but, on the other hand, I see the greatest fairness and justice. It seemed to me when this substitute of the gentleman from Orleans [Mr. Church] was adopted, that it was not understood, and that its effect was not perceived by the Convention; therefore I am glad that the gentleman from Onondaga [Mr. Alvord] has moved to reconsider the vote by which it was adopted, and I trust that the action then taken will be reversed, and that we shall abide by the arrangement adopted in Committee of the Whole, by which I am still willing to abide, and by which I supposed the gentleman from Or-

leans [Mr. Church], and those who acted with him, were willing to abide.

Mr. RATHBUN—The chairman of the Finance Committee, who moved this proposition in Convention and advocated it there, is not now in the city. I was not present at the time of the discussion spoken of by the gentleman from Jefferson [Mr. Bickford], and I know nothing on that subject except what I have heard from him and from the gentleman from Onondaga [Mr. Alvord]. But I do know that when this proposition was presented it was fully discussed, and that it was passed by the ayes and noes in Convention.

Mr. BICKFORD—Who discussed it?

Mr. RATHBUN—I did for one, in my way—not very much, to be sure, but as I usually do; and I recollect very well that several gentlemen wanted to know how much my county had received from the State, and I said it had received nothing, except some money given to an orphan asylum, under this system of charities; but I am not aware that the people there ever asked the State for a dollar. If any body did ask for it, I know it was done without the knowledge or consent of the people; and I know further that those people would like remarkably well to be let alone and not to be called upon any further than they have already been called and taxed to build railroads for any body—or, at least, until after they shall have paid up the tax to be collected this winter for money given away for railroads last winter.

Mr. WEED—May I ask the gentleman from Cayuga a question?

Mr. RATHBUN—I have no objection.

Mr. WEED—I would ask the gentleman if the same "let alone" principle which he admires so much would not have applied equally well to the people of the remote counties of the State when the people of Cayuga county were so anxious about the Cayuga canal, and were spending immense sums of money for the Cayuga marshes?

Mr. RATHBUN—I have no recollection, sir, that the people of Cayuga county were very much engaged in the business of making the canal. I very well remember when I was a boy hearing many men say that they "wished Clinton was at the bottom of the big ditch." I was hardly old enough to know what the big ditch was, but I was old enough to notice and remember this remark, because in those days I thought Mr. Clinton was a man of some importance and I wondered that any body should want him put in a ditch. That was the prevailing sentiment among a large portion there until their eyes were opened. But that canal was built a great many years ago, and if I remember right would have paid for itself and has paid for itself, and has been taxed to pay and will if fairly treated pay for every thing else. However, that has nothing to do with this question. This is a question which has been discussed in Committee of the Whole earnestly and it was carried one way, it is claimed, by a very large majority. It was discussed and voted upon in this Convention and carried the other way. Now, if we are to take up all the motions to reconsider which have already been made and to go through with those subjects, and re-argue all the questions involved, we shall

spend ten days more on this bill; and I think as a question of good taste and good policy, having settled this question in committee, and in Convention it is better to take it as it is and abide by it; and at some time or other be able to feel that we have something that is done—something that is not to be reconsidered, re-examined or re-discussed. I have said upon this subject at various times, all that I could say, and I now protest against the right of this Convention to enact a part of the Constitution, giving power to the Legislature to donate money which the State does not own, to put their hands in the pockets of the people, and get money to replace that, so donated. That is all I have to say on this subject.

Mr. C. C. DWIGHT—Believing with my colleagues, that a sufficient time was spent upon this question both in Committee of the Whole and Convention, I move the previous question.

Mr. WEED—Upon that I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the motion of Mr. C. C. Dwight, to order the previous question, and it was declared carried, by the following vote,

Ayes—Messrs. A. F. Allen, C. L. Allen, Andrews, Archer, Armstrong, Baker, Barker, Beadle, Bergen, E. P. Brooks, E. A. Brown, Carpenter, Case, Cheritree, Church, Cochran, Corbett, Corning, Curtis, Daly, Duganne, C. C. Dwight, Everts, Eddy, Farnum, Ferry, Francis, Fullerton, Gould, Graves, Hadley, Hammond, Hant, Hardenburgh, Houston, Kinney, A. Lawrence, M. H. Lawrence, Lee, Livingston, Lowrey, McDonald, Merrill, Monell, Morris, Potter, President, Rathbun, Reynolds, Root, Rumsey, Seaver, Tappen, Van Campen, Van Cott, Wakeman, Wales, Wickham, Williams—59.

Noes—Messrs. N. M. Allen, Alvord, Axtell, Ballard, Barto, Beals, Beckwith, Bell, Bickford, Bowen, E. Brooks, W. C. Brown, Chesebro, Comstock, Cooke, Field, Fowler, Fuller, Hale, Hatch, Hitchcock, Ludington, Mattice, Miller, Prindle, Silvester, Smith, Spencer, Stratton, M. I. Townsend, S. Townsend, Weed, Young—33.

The PRESIDENT announced the question to be on the motion of Mr. Alvord to reconsider the vote by which the amendment offered by Mr. Church was adopted in Convention.

Mr. GRAVES—I desire to make an inquiry. Does the matter as it now stands, debar the Legislature from granting any thing except for charitable and educational purposes, and even for these purposes only upon a two-thirds vote?

The PRESIDENT—The Chair so understands it.

Mr. E. BROOKS—As a question of order, I suppose the question now about to be voted upon is the reconsideration of the vote by which the proposition of the gentleman from Orleans [Mr. Church] was adopted.

The PRESIDENT—That is the simple question.

Mr. E. BROOKS—But if the majority vote in the affirmative then will recur the precise question.

The PRESIDENT—The gentleman from Richmond [Mr. E. Brooks] is right. The enforcement of the previous question cuts off all debate.

A DELEGATE—Mr. President—

The PRESIDENT—The Chair cannot permit further debate. The question is, shall the vote by which this section was adopted be reconsidered?

Mr. ALVORD—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put upon the motion of Mr. Alvord to reconsider, and it was declared lost, by the following vote:

Ayes—Messrs. Alvord, Axtell, Baker, Beals, Beckwith, Bell, Bickford, E. Brooks, E. A. Brown, Cheritree, Comstock, Cooke, Eddy, Ferry, Field, Fowler, Fuller, Graves, Hale, Hand, Hitchcock, Kinney, A. Lawrence, Ludington, Mattice, Miller, Prindle, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Wakeman, Weed, Young—35.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Andrews, Archer, Armstrong, Ballard, Barker, Barto, Beadle, Bergen, Bowen, E. P. Brooks, W. C. Brown, Carpenter, Case, Cassidy, Chesebro, Church, Cochran, Corbett, Corning, Curtis, Daly, Duganne, C. C. Dwight, Everts, Farnum, Francis, Fullerton, Gould, Hadley, Hammond, Hardenburgh, Houston, M. H. Lawrence, Lee, Livingston, Lowrey, McDonald, Merrill, Monell, Morris, Potter, President, Rathbun, Reynolds, Root, Rumsey, Seaver, Silvester, Tappen, S. Townsend, Van Cott, Wales, Wickham, Williams—57.

The question was then put upon the adoption of the article, and it was declared adopted, and was referred to the select Committee on Revision.

The PRESIDENT—The next business in order is the consideration of the report of the Committee on Canals, in reference to the management of the canals, as amended in Committee of the Whole.

Mr. ALVORD—I move, sir, that the debate upon this article in Convention be limited to five minutes, and no one person to address the chair upon any one proposition more than once.

Mr. HALE—I move to amend by substituting fifteen minutes instead of five. I have nothing to say upon this subject myself; still the matter of the management of the canals has not been very fully discussed, and I would like to hear the views that could not be expressed properly in five minutes.

The question was put upon the amendment offered by Mr. Hale, and it was declared lost.

The question recurred upon the motion of Mr. Alvord and it was declared carried.

The SECRETARY then read the first section of the article under consideration as follows:

SEC. 1. The Comptroller, Treasurer, and Attorney-General shall be the commissioners of the canal fund; said commissioners shall have power to appoint and remove all officers who shall be intrusted with the ascertainment, collection and safe keeping of the revenues derived from the tolls on the canals of this State, and with the audit of the canal department and the superintendent of public works, shall determine and fix the rates of tolls on the canals, which shall not be reduced below the rates fixed for the year eighteen hundred and sixty-seven, until the canal debt, so-called, shall have been paid or provided for, except with the concurrence of the Legisla-

ture; the commissioners of the canal fund shall also have such further powers and duties as now are or may hereafter be prescribed by law, not inconsistent with this Constitution.

Mr. BICKFORD—I move to strike out in the ninth, tenth, and eleventh lines all after the word "sixty-seven" in the ninth line, to and including the word "Legislature" in the eleventh line, or rather I will modify it. Strike out the words, "until the canal debt, so-called, shall be paid or provided for." The effect of this amendment, if it is adopted, will be that the tolls on the canals must remain as they were in 1867—that is that they shall not be reduced below what they were in 1867—even when the canal debt, so-called, shall have been paid. My object is, as it must be obvious to every one on a moment's reflection, to insure the return to the treasury of the State of the amount advanced by taxation for the improvement of the canals. If the tolls may be reduced after the canal debt is paid, they may be reduced to a sum which will merely pay the cost of superintendence and repair, and in that way the eighteen millions may never be returned to the treasury of the State. If this canal board has the power to reduce taxation after that the sum may never be returned to the treasury at all.

The question was then put upon the amendment offered by Mr. Bickford, and it was declared lost.

Mr. CHURCH—I move to strike out all after the word "canals" in the eighth line, down to and including the word "Legislature," in the eleventh line. This strikes out the requirement that the tolls shall not be reduced below those of 1867. I only desire to say that I regard it very bad policy to fix in the Constitution the rate of tolls upon the canals. That is a subject that should be left to the public officers to fix from time to time, as the exigencies of business and commerce shall demand. It has always been left with the canal board, and safely left, as I think. These rates have been changed from time to time according to the circumstances which have existed, and to make an iron rule that the tolls on the canals shall remain the same for twenty years, is it seems to me, as unwise a policy as can be adopted by this Convention. I therefore hope that it will be stricken out.

Mr. ALVORD—I believe that the distinguished gentleman from the county of Orleans [Mr. Church was, in the year 1858, if I recollect right, Comptroller of the State of New York, and constituted one of the members of the canal board, and I believe that gentleman undertook to follow the law of the land, and the Constitution of this State was at that time just exactly, except so far as regards the year, this very provision, that the canal board had no right to reduce the rate of tolls below the rate at which they were in 1852, without the concurrence of the Legislature. This section provides, not that they may not put them up or change them, but they cannot reduce them below what they were in 1867, without the concurrence of the Legislature. In 1854, in the amendment of the Constitution, if the gentleman will turn to it, he will see that the canal board had no right to

reduce the tolls below 1852, without the concurrence of the Legislature.

Mr. CHURCH—Will the gentleman from Onondaga [Mr. Alvord] allow me to ask him whether he does not believe that a Legislature, composed of one hundred and twenty-eight members from every part of the State, is the very worst body to fix the rate of tolls on the canal?

Mr. ALVORD—I do not propose that the Legislature do fix the rate of tolls. It is simply a proposition of this kind: There has been complaint upon complaint that the canals are falling short of paying their indebtedness, and that the people of this State have been saddled with taxation in consequence thereof; and we put in the same provision that was put in the constitutional amendment of 1854, not that the Legislature shall fix the rate of tolls, but that, if the canal board think it for the interest of the State to go below the tolls of a certain period, then they shall ask the consent of the Legislature so to do. They are the men to fix the rate of tolls, and if they reduce them it must be with the consent of the Legislature. It should be submitted to the Legislature. My idea in reference to the matter is, that whenever you find that the canal board reduced tolls with the sanction of the Legislature, under the constitutional provision of 1854, then they made a great mistake. There would have been more money in the treasury of this State, without turning away a single pound of freight from the canals if they had let the tolls alone. The tolls are a mere bagatelle so far as regards the question of expense, and if we had kept these tolls as the constitutional amendment of 1854 placed them, we should have had many millions more in the treasury.

Mr. HATCH—We had this subject of tolls before the Convention I think about a week ago, and it underwent some discussion at that time. The gentleman from Onondaga [Mr. Alvord] always refers to the reduction of tolls during a period of short crops, in order to maintain his position. Every body who is familiar with the operation of this canal knows that in the years to which he refers there was no business upon these canals. There were no revenues of any amount received, so that that period in the history of the canals to which he refers does not prove any thing on this question. But I desire to read some portion from the message of Governor Marcy in 1835 on this subject, and to call the attention of this Convention to his statement at that time, of the effect of the reduction of tolls, the effect upon the tolls themselves and upon the business of the canal. In his message in 1835, when urging the necessity of enlargement of the capacity of the Erie canal, in order to secure the present and future increasing trade from the North-west to the canals, he said:

"The extent of business on all canals is increased by the facility of transportation and a reduction of the expenses. By enlarging the capacity of the Erie canal the cost of transportation will be diminished. The tolls are a considerable part of the expense. This subject has occupied the anxious attention of the canal board during the present year, and some of the beneficial results to which I have alluded, particularly the

wide diffusion of the trade into the western and south-western sections of the Union, are justly ascribable to the enlightened views of this board and their judicious modification of the rates of toll. Previous to opening the canals last season the tolls were reduced twenty-eight and one-half per cent on most of the products of the country, and fourteen and a quarter per cent on merchandise. Notwithstanding this reduction, the amount of tolls received on the Erie and Champlain canals during the last season is \$1,464,259.98, which is \$234,776 51 more than the receipts of the preceding year.

"We ought not, however, to flatter ourselves that we shall enjoy what we now possess, and what lies in prospect before us, without competition. The western trade is a noble prize for which several of the Atlantic States are contending with a laudable emulation; and they are making powerful efforts to remove the barriers interposed by nature between them and their object. We look on their exertions with no unfriendly feelings, and we trust that they will view in a like spirit, our efforts to administer to the wants and to subserve the conveniences of the western country. It has already become quite evident that the capacity of the Erie canal will not much longer be adequate to the exigency of the business on it. The improvements which will soon be required, are double locks to facilitate the passage of boats, and an enlargement of the canal in width and depth."

I trust the Convention will notice that the improvement proposed was for the reason that the Erie canal would not be "much longer adequate to the exigency of business." His statement shows conclusively what the effect of the reduction of tolls is upon the amount of the tolls received by the State and upon the business of the Erie canal. Increased business was the result of lower tolls. Our Erie canal is in the same condition to-day. We want more capacity and lower tolls, and this must be done to meet the exigency of business. The section as it now stands is not very objectionable, as it leaves an unrestricted power with the Legislature and canal board to regulate the tolls. I am in favor, however, of the amendment of the gentleman from Orleans [Mr. Church], as that would remove all restriction upon regulating the tolls.

The question was then put upon the amendment offered by Mr. Church, and it was declared lost.

Mr. E. A. BROWN—I move to amend by inserting in the first line, after the word "The," the words "Lieutenant-Governor" and "Secretary of State," so as to read "The Lieutenant-Governor, Secretary of State, Comptroller, Treasurer and Attorney-General shall be the commissioners of the canal fund." I think that the duties imposed upon those officers by this section, are such as to require the services of the Lieutenant-Governor and Secretary of State in addition to the three other officers.

Mr. ALVORD—I merely wish to say, in a very few words, what I said when this proposition of the gentleman was up before. The difficulty regarding the matter is simply this, that practically now the commissioners of the canal fund, being

composed of five, the Comptroller being necessary to be present under the law, a large amount of business has been done by the inferior officers in anticipation of the meeting of the commissioners of the canal fund, because they are not, half of the time when business is to be done, present at Albany. The Comptroller, Attorney-General, and Secretary of State, two of them being a quorum, almost invariably two out of three are present to do the business; but while there are five, and three required to form a quorum, you will have the work done illy, or else you will have it done by inferior officers, as has been done in the past.

The question was then put on the amendment offered by Mr. E. A. Brown, and it was declared lost.

Mr. CURTIS—I move to amend the first section by striking out the fourteenth line. It says: "the commissioners of the canal fund shall also have such further powers and duties as now are or may hereafter be prescribed by law, not inconsistent with this Constitution." It implies that laws may be passed which are inconsistent with the Constitution. Every law must be consistent with the Constitution.

The question was now put upon the amendment offered by Mr. Curtis, and it was declared carried.

The SECRETARY then read the second section as follows:

Sec. 2. The Governor shall nominate and, with the consent of the Senate, appoint an auditor of the canal department, who shall hold his office during the term of five years, at a salary to be fixed by law; and he shall have such powers and perform such duties as now are or may hereafter be prescribed by law and not inconsistent with this Constitution. He may be suspended from office by the commissioners of the canal fund, for incompetency, neglect of duty or malfeasance in office, and removed by the Governor on their recommendation; but no such suspension or removal shall be made unless he shall have been previously served with a copy of the charges preferred against him, and shall have had an opportunity to be heard in his defense. In case of the suspension or removal of the auditor of the canal department under this section, or his vacation of the office for any cause during the recess of the Senate, the Governor, upon the recommendation of the commissioners of the canal fund, may appoint a proper person to act as such officer during such suspension, or to fill the vacancy occasioned by such removal or vacation of office, and the person so appointed shall hold such office no longer than the duration of the session of the Senate succeeding such appointment.

Mr. COCHRAN—I propose to strike out that section.

Mr. E. A. BROWN—In the fifteenth and sixteenth lines I move to strike out these words: "Upon the recommendation of the commissioners of the canal fund." I move to strike that out in order that the Governor may take the responsibility.

The question was then put upon the amendment offered by Mr. E. A. Brown, and, on a division, it was declared carried, yeas 44, noes 37.

Mr. BICKFORD—I further move to amend by striking out all after the word "recommendation," in the ninth line, to and including the word "defense," at the end of the twelfth line. This is of the same character as the amendment just adopted. The Governor and the Senate should control this officer at all times without trying him. If the Governor and Senate agree in regard to the matter, they should be allowed to remove him without a trial and without charges. That is the way I want it to be, and the way it will be if this amendment is adopted.

The question was then put upon the amendment offered by Mr. Bickford, and it was declared lost.

Mr. McDONALD—I move to amend by adding after the word "Governor," in the first line, "on the recommendation of the commissioners of the canal fund": "The Governor, on the recommendation of the commissioners of the canal fund, shall nominate," etc. The reason is this, that the auditor is in fact the business clerk and the business man for these commissioners of the canal fund, and I deem it proper that, as he occupies this position, they should have something to say with regard to his appointment. It will do no hurt. They have him in their employ, and as they simply nominate him, he can be elected the same as when nominated by the Governor, and appointed with the consent of the Senate. It seems to me, for these reasons, they ought to have something to say about who shall hold that office, and the appointment ought to be made on their recommendation.

Mr. CHURCH—If this section is to be retained the amendment of the gentleman from Ontario [Mr. McDonald] ought to prevail. The auditor is the clerk of the commissioners of the canal fund and of the canal board, made so by law. I do not think it is wise to make this officer a constitutional State officer. If he is to be a State officer at all, he should be elected like the other State officers, the Comptroller, Secretary of State, and the others. But, in my judgment, the whole section should be stricken out, and leave this officer where he was before this department was built up, as the chief clerk of the canal department, the clerk of the commissioners of the canal fund and of the canal board. Therefore, I shall vote, when it comes to the question of striking out the whole section, in favor of it.

Mr. E. A. BROWN—A single word. I believe the auditor is now appointed by the Governor and Senate. The commissioners of the canal fund have no part nor lot in the matter any more than any other citizen of the State, and I see no reason, if this officer is to be continued and made an officer by this Constitution, that he should be appointed by the Governor and Senate and also nominated by the commissioners of the canal fund. Suppose the commissioners of the canal fund and the Governor disagree with regard to the nomination of this officer. Where are you going to get one? Is it necessary that he should be nominated first by the commissioners of the canal fund? and if the Governor does not see fit to nominate to the Senate the man sent by the commissioners of the canal fund to the Governor, what is to be done? How is the officer to

be appointed? I do not understand that it is necessary that the clerk of the canal department—the auditor of the canal department is necessarily to be a man entirely satisfactory to every member of the commissioners of the canal fund—in other words, that he is by necessity to be their instrument exclusively. I do understand there is a necessity of creating an independent officer, having duties to discharge that may perhaps bring him in conflict sometimes with the views of the commissioners of the canal fund—an honest, upright, straightforward, competent man, to stand there and take care of the State and its interests in regard to the canal fund and the duties of the department of which he is auditor.

Mr. CHURCH—Why not elect the auditor?

Mr. E. A. BROWN—That is my doctrine—that he should be elected; and if the honorable gentleman [Mr. Church] will move that amendment, that he shall be elected by the people, as the Comptroller is, I will vote for that amendment cheerfully. That is my doctrine in regard to all these officers, that they should all be elected by the people instead of being appointed in the manner proposed. It seems to me that the appointing power should not be embarrassed by a second appointing power aside from the Governor and the Senate. That the commissioners of the canal fund should not be allowed to nominate this auditor to the Governor, and then the Governor again nominate him to the Senate.

Mr. ALVORD—I took occasion to say when we were in Committee of the Whole on this article of the Constitution, that so far as regards the auditor, I disagreed with the committee, but gave way and agreed to the report of the committee. I believe, with the gentleman from Orleans [Mr. Church], that there has been a wide departure from the spirit of the Constitution of 1846, in creating this officer. He is nothing more nor less than a clerk of the commissioners of the canal fund, and should not be, and would not have been if they had not slied away the powers of the commissioners of the canal fund, to give to him; and I acquiesce in striking out this section entirely; and I agree with the gentleman from Orleans [Mr. Church] if this matter is retained the amendment of the gentleman should pass, and also a reconsideration of that portion which was stricken out by the amendment of the gentleman from Lewis [Mr. E. A. Brown].

The question was then put upon the amendment of Mr. McDonald, and it was declared lost.

Mr. RUMSEY—I move to strike out of the ninth and tenth lines the words "suspension or," so that the Governor may suspend this officer without serving upon him a copy of the charges preferred against him. The section will then stand that he may be suspended, but cannot be removed until a copy of the charges against him shall have been served upon him, and until he shall have had an opportunity to be heard in his defense. But the commissioners of the canal fund ought to be at liberty to suspend their auditor without giving him notice of the reasons for the suspension. It may be important to suspend him immediately, then give him notice, let him be tried, and if found guilty he can be removed.

The question was put upon the amendment offered by Mr. Rumsay, and it was declared carried.

Mr. WALES moved to reduce the term of the office of the auditor from "five" to "three" years.

The question was put on the adoption of the amendment offered by Mr. Wales, and it was declared lost.

No further amendment being offered, the question recurred on the motion of Mr. Cochran, to strike out the section.

Mr. AXTELL—I hope this motion will prevail for reasons which I stated in Committee of the Whole, when I moved to strike this section out. I have seen the subject discussed in a journal published in this city, in an anonymous communication, bearing the ear-marks of the auditor's office, in which there is an attempt to question the positions taken by myself in regard to the manner of doing business in that office. But I think it signally failed. After the action of this Convention, in regard to the public moneys, I think it necessary, in order that we may consistent, that this section should be stricken out. The action already had in regard to the public moneys will take from the auditor a large amount of power that he has hitherto exercised in regard to the canal funds. It virtually reduces him to a clerk for the canal fund commissioners, and therefore we should strike out this section.

The question was put on the motion to strike out the section, and it was declared carried.

The SECRETARY read the next section as follows:

SEC. 3. The Governor shall nominate to the Senate, and with its consent, shall appoint a superintendent of public works, who shall hold office for five years, and whose salary shall be determined by the Legislature. He shall be charged with the execution of all laws relating to the repairs and navigation of the canals, and of any improvement that may be authorized by law; and he shall make the rules and regulations for the government of the navigation of the canals. He may be suspended from office and removed by the Governor, on the recommendation of the commissioners of the canal fund, for incompetency, neglect of duty, or malfeasance in office; but no such removal shall be made unless he shall have been previously served with a copy of the charges preferred against him, and shall have had an opportunity of been heard in his defense. In case of the suspension, removal from office, vacation, or inability to serve, from any cause, of the superintendent of public works, during the recess of the Senate, the senior assistant superintendent of public works shall act in his place and stead; but not for a period beyond the end of the session of the Senate next after such suspension, removal, vacation, or inability to serve. The Governor, upon the recommendation of the superintendent of public works, may nominate, and with the consent of the Senate, appoint four assistant superintendents of public works, who shall hold their office five years, at an annual salary to be fixed by law; the said assistant superintendents shall be subject to the authority and control of the superintendent of public works, and may be

removed by him for cause; all other officers and employees necessary for the care and management of the canals, other than financial officers, may be appointed by the superintendent of public works, subject to removal by him, and he may have such other powers and duties, not inconsistent with this article, as may be prescribed by law.

Mr. KINNEY—I move to amend by inserting after the words "superintendent of public works," in the second line, the words "who shall be a practical engineer." I think the superintendent of our public works should be a practical engineer. If the public works are to be left in the hands of mere politicians, I fear they will fare worse than under our present system. In fact, I am not sure but it would be well to require that the four assistant superintendents should also be practical engineers. I think it time we should look to the scientific as well as the political qualifications of men who hold such positions. But I offer the amendment only with regard to the superintendent himself.

Mr. ALVORD—I trust the people of this State have been educated enough to know that the very worst possible man to do the practical work upon any canal or any thing else is a man who is merely an engineer. They are good to make estimates and good to cause expenses. Here we have a work that is entirely finished; the end has come to it; and it is nothing more than the work of a good practical business man to superintend it. It should be no objection, as a matter of course, to a good man that he happens to have been educated as a civil engineer. But you can find as many good men in the State who have never studied civil engineering as there are civil engineers, and who would be fully as efficient in superintending the working of a finished canal as they are. I trust, therefore, that we shall not undertake to indicate a class of persons from whom shall be selected the superintendent of the public works. The railroad superintendents in the State are not civil engineers. No railroad superintendent of any railroad that I know of is a civil engineer. Business men are as fully able to do all that is necessary to do upon the canal—to keep it constantly in repair and in use, now that it is completed—as any civil engineer. It would not be against a man that he was an engineer, but certainly, in my opinion, it would be very little in his favor.

The question was put upon the adoption of the amendment offered by Mr. Kinney, and it was declared lost.

Mr. TAPPEN—I move to amend the first part of the section so that it shall read, "There shall be elected a superintendent of public works," etc. This officer will have all the power and dignity of other public officers who are elected.

The question was put on the adoption of the amendment offered by Mr. Tappen, and it was declared lost.

Mr. CHESEBRO moved to strike out the entire section.

Mr. McDONALD—I move to insert in the twentieth line, after the words "appointed by the," the words "commissioners of the canal fund on the recommendation of the." The object of the amendment is this: By the arrangement as it

now reads, the Governor appoints the superintendent and he appoints all the employees upon the canal. It does seem to me that in these political times, it is placing too much power in the Governor's hands. It virtually gives the Governor in addition to his direct appointing power, the entire appointment of every officer upon the canal, except the financial officers. He has the undisputed power; because, if he sees fit, he can make that arrangement with the superintendent of public works before he appoints him. I do not say that the Governor will do this; but I know that Governors are human, just like other men; and while they may make proper appointments, they look a little to their own advancement, especially when capable of being re-elected, as they now are by the Constitution. It seems to me that the Governor has all the power he ought to have now, and we ought not to add to it. If we give him the appointment of the superintendent of the public works, that ought to satisfy him; and when we come to the appointment of the officials, we ought to leave that to the commissioners of the canal fund, on the recommendation of the superintendent of the public works. In that way we shall remove all danger of the Governor using this power of appointment for the sake of retaining his office, or for political purposes.

Mr. ALVORD—All the employees (after we have got the financial officers, who are the collectors and the weigh-masters) are a set of men who are hired by the day, and hardly any of them get over two dollars a day. They are men who are used upon the repair boats, who tend the locks, who shovel dirt upon the line of the canal. The gentleman's proposition is that, when the superintendent of the public works shall have occasion to hire any of these men, perhaps for two or three days, or a week, or a month, at Geneva or some other distant point on the canals, he may recommend their appointment, but must send to the commissioners of the canal fund at Albany before he can employ them. These employees are never of a degree higher than common laborers; and it seems to me sufficient to authorize the superintendent of the public works to appoint them.

The question was put on the adoption of the amendment offered by Mr. McDonald, and it was declared lost.

Mr. E. P. BROOKS—I move to amend by striking out from the twenty-first line the words "upon the recommendation of the superintendent of the public works." I suppose that it was the intention of the committee to provide that the work of the canal should be in charge of the superintendent of public works, and that with him should be associated four assistant superintendents. I suppose it was not expected that one man would be able to do all the supervisory business of the canals of the State. Yet, by this provision, the superintendent of public works may prevent any body else from having any thing to do with the management or control of the canals; because the provision now reads that "the Governor, upon the recommendation of the superintendent of public works, may nominate" four assistant superintendents; which leaves it entirely with the superintendent of public works to say

whether he will have any body to help him or not. Unless he first "recommends" to the Governor the appointment of these four assistants, there will be none appointed. The Governor cannot nominate on his own motion. It is entirely within the control and at the option of the superintendent of public works to say whether he shall have assistants or not. I suppose it will not be claimed by any body with any familiarity with the management of the canals, that any one man alone is competent to take the entire charge of a thousand miles of canal. I have very great misgivings about the policy of making one man the autocrat of the tow-path, with all the power and patronage which it is proposed to give him; but I am willing to yield my judgment to the judgment of the committee in this respect, provided proper restrictions are thrown around him. But I am opposed to giving the superintendent this power, to prevent the Governor or any body else from appointing proper and necessary assistants. A gentleman near me suggests that the amendment should be so it would read, "shall" instead of "may"; but that will not accomplish the object desired, or obviate the objection. I would leave the superintendent's "recommendation" out entirely. If there are to be four "assistant superintendents," with powers almost equal to those of the superintendent himself, why not allow the Governor and Senate to appoint these officers of co-ordinate authority, without the interference of their appointee?

Mr. HARDENBURGH—I would like to call the attention of my friend to the language of the twenty-seventh line. In order to accomplish his object, he must also move to strike out the words there, "and may be removed by him for cause."

A DELEGATE—It is "for cause."

Mr. HARDENBURGH—The superintendent is to judge of the cause.

Mr. E. P. BROOKS—I had not got so far as that with my amendment. When I come to it I may move that also. I think it is apparent that the assistant superintendents should not depend upon the caprice of the superintendent. If the appointment is to depend on his will or caprice he may assume the entire control of the canal and have no assistants whatever.

Mr. BELL—I think the gentleman from Chemung [Mr. E. P. Brooks] mistakes the intention and object of this section. If I understand it aright it is to place in the hands of one man, to be called the superintendent of public works, the entire control of the canals, and to make him responsible for their condition. If that is conceded to be right, then assistants will of course be appointed to relieve him of much of his labors in the matter; and there need be no fear that this power will not be exercised by the superintendent of the public works. Should this amendment prevail it will leave the whole section incongruous and crude. It will not leave it as it was intended by the committee who reported it to the Convention in Committee on Canals, and as it came from the Committee of the Whole. It will be seen, as has been suggested, that the provision contained in the twenty-seventh line of this section, the superintendent of public works has the power of removing any or all of these assist-

sents. It is a matter entirely immaterial to the public and to the State whether he recommends the appointments or not; but the presumption is that he will recommend them, and that they will be appointed as a matter of necessity and convenience.

Mr. E. P. BROOKS—Suppose this superintendent of public works should fancy that he might take all the contracts for hundreds of thousands of feet of lumber, and for thousands of dollars' worth of spikes, etc., required upon the canal, and did not care to have any assistants to watch him; if he wanted all the stealings himself he would not be apt to recommend any body to help him.

Mr. BELL—I will answer the gentleman in the language of the section, that "he may be suspended from office and removed by the Governor, on the recommendation of the commissioners of the canal fund, for incompetency, neglect of duty, or malfeasance in office." It is entirely within the control of the Governor and the Senate, and unless we reject the entire section this amendment should be voted down.

Mr. BECKWITH—I hope the amendment proposed by the gentleman will not prevail. It will destroy the harmony which the committee intend to introduce upon this subject. Our object in recommending this provision was to have one man responsible for the management of the canals. If he be not permitted to choose his subordinates, then they are not responsible to him, and you will have that very evil existing that exists at this day. If your canal commissioners, who being constitutional officers, and your engineer being also a constitutional officer, elected by the people, disagree, there is no one to settle this disagreement, and the interest of the people suffers. Should the canal commissioners disagree with each other, and the engineer also disagrees with them, then there is perfect confusion. Now if the superintendent shall not have the power to nominate his officers, and if they are appointed without his recommendation, by the Governor alone, you may and very likely will have this same discord and want of harmony. If he should neglect to nominate these assistants that are provided for in this Constitution, in my judgment it would be good cause for his removal, and I think the Governor ought to remove him for neglect of duty. I hope, therefore, that this amendment will not prevail.

Mr. HARDENBURGH—I differ from the gentleman who has just taken his seat in regard to the amendment proposed by the gentleman from Chemung [Mr. E. P. Brooks], in the opinion that the amendment will break up the harmony of this section. I desire to call the attention of this Convention to a state of facts that may well occur, to which I suppose this amendment was aimed. The section provides that "in case of the suspension, removal from office, vacation, or inability to serve, from any cause, of the superintendent of public works, during the recess of the Senate, the senior assistant superintendent of public works shall act in his place and stead." Suppose the Governor removes him according to this section, then you have got nobody to take his place. The Governor has power to remove him, but if he does the canal is left with nobody to take care of it, so

that practically the Governor cannot remove him. That is the section as it is now. I think that was an oversight. I entirely agree with the gentleman who has proposed this amendment. I think it is sufficient that in the twenty-sixth and twenty-seventh lines we provide that "the said assistant superintendents shall be subject to the authority and control of the superintendent of public works." That is power and authority enough, and that is all we should give him. If he can remove his assistants the moment a complaint is whispered against them, the canal will be left without any head or any tail to it. I shall therefore vote for this amendment, and shall propose to amend so that these assistant superintendents may be removed by the Legislature for cause. My vote will not be given to allow the superintendent himself to remove these four subordinate superintendents. We should retain in the Legislature some sort of power over him.

The question was put on the adoption of the amendment offered by Mr. E. P. Brooks, and it was declared lost.

Mr. HISCOCK offered the following substitute for the entire section:

Three canal commissioners shall be chosen at the general election which shall be held next after the adoption of this Constitution, one of whom shall hold his office for one year, one for two years, and one for three years. The commissioners of the canal fund shall meet at the Capitol on the first Monday of January next after such election, and determine by lot which of said commissioners shall hold his office for one year, which for two, and which for three years; and there shall be elected annually thereafter one canal commissioner, who shall hold his office for three years.

Mr. COOKE moved to amend by inserting after the word "Legislature," in line four, "who shall be required by law to give security for the faithful execution of his office before entering on the duties thereof."

The PRESIDENT ruled the amendment out of order at present, not being germane to the substitute offered by Mr. Hiscock.

Mr. HISCOCK—The substitute I offer is the provision of the present Constitution. I am aware that there is a great deal of feeling at the present time against the present management of the canals; but, in my judgment, when we abandon the present system and adopt the system provided in the section now before the Convention, and which I propose to amend, we are going from bad to worse. The first objection that I would indicate to the system contained in this section, as reported, is the vast amount of political power that is to be vested in one head—these canals running throughout the State, the appointing power practically being vested in the Governor, and once having been exercised by him, this superintendent of public works being created, he holds more power and more political patronage than ever before has been held or exercised by any one man in this State. Again, it looks like going back to the old superintendent system upon the canals. I do not believe, though I am not very conversant with the canals, that there is any gentleman who has studied the ques-

tion, and who is conversant with the old superintendent system, who will argue that that system was preferable to the system of to-day. Again, I believe it to be preferable that the chief executive officers of the canals be distributed in distinct divisions, where they may be held accountable by the people, the forwarders and merchants of their respective divisions, for the faithful discharge of their duties. A man proving unfaithful to the trust is never returned to it; and I fear we shall have much less direct responsibility with this one man, vested with all these powers and this patronage, who would have no direct responsibility to the people, but would only be too desirous of perpetuating himself in his position. It is said he can be removed. But you can only remove him for cause, and for the same cause you can indict and convict the canal commissioners under the present law. You can convict them for malfeasance in office and depose them. You only have this same right to try this man for malfeasance in office, and if convicted, he may be removed; but that power amounts to but little, for we know that in case of malfeasance in office, it is not usual to leave the evidence so patent that a conviction can be obtained. For these reasons I am in favor of the old system as it exists at present, and therefore I have moved to substitute the old section of the Constitution.

Mr. ALVORD—I had supposed that the people of this State were educated up to the belief that the present system is obnoxious, and that it is absolutely and vastly worse than any that ever before obtained in the history of this State. It has been said, and repeated over and over and over again. I have heard it myself, that the old superintendent system was a vicious system. Now, if the gentlemen will go back to the records, they will find in the first place that it was as cheap a system as ever obtained in this State. They will find too that there were no such complaints about it running in the ears of the people as are made to-day of the canal commissioners under the present system.

Mr. HISCOCK—When the gentleman says that the old superintendent system was as economical a system as the present one, does he not lose sight of the fact that at the time that superintendent system prevailed we had not our present enlarged canals, and that it was not then necessary to have any such an amount of money expended on repairs, and that in all respects there was less duty and less responsibility than there is at present?

Mr. ALVORD—I will answer the gentleman that so far as regards the condition of the canal, the comparative difference of the canal when it was first given into the hands of the contractors on the one side and when it was first given into the hands of the superintendent on the other, the present canal is a finished canal in comparison with the old one, and really requires very much less attendance to keep it in good navigable order. The result of our present system is to put the canals in such shape that if they were returned upon the hands of the people to-day, and had to be put by the people into as good condition as they would be in if they were in the hands of the superintendent, it

would cost more money than you will have got in one year from the revenues of the canals under our present system. Those who have charge of the canals have little more than tided along. They get together only to see how not to do it, and if they can tide along without an actual break or an actual stoppage of navigation, and pocket fifty, seventy-five and eighty-seven and a half per cent of the money which is appropriated for the repairs of the canals, they will accomplish their object, and will return the canals upon the hands of the State utterly dilapidated and ruined; and one reason of this is that our system is all wrong. It is a system of divided responsibility. The different canal commissioners have charge of different divisions of the canal; one commissioner has his division in perfect order, but on leaving it you run directly against another division which is in such wretched order that you cannot stir. We saw the results of this system last fall, and at other times, and we will continue to see such results under this system. Under the old superintendent system, there is not a boat which lies now on this side of Utica in the canal, but would be now in the North river, or on its way to Albany.

Mr. CHURCH—I shall support the amendment of the gentleman from Onondaga [Mr. Hiscock]. I am not prepared to advocate or support the radical change proposed by this article reported by the canal committee. In my judgment it is, in the language of the gentleman from Onondaga, "going from bad to worse." Our canal system embraces at this moment a thousand miles of canal which have been constructed and taken care of from the date of their construction up to the present time under the supervision of canal commissioners; and as a general proposition, I think every gentleman will admit that the duties of that office have been faithfully and honestly discharged. If there are any exceptions, it is no more than is true with reference to every other class of officers in the State. The proposition of the canal committee—the article now under consideration—involves two things. It absolutely requires a return to the old system of superintendence in the management of the canals. If we retain the canal commissioners, if we adopt the substitute, it would not necessarily follow that we cannot return to the superintendent system. It does not follow that we might not abandon the contract system and go back to the superintendent system. We all know that under that system the State spent three dollars for every one dollar's worth of work done upon the canals, and under such a system it will always be so. Under the present form of contracts, which have been adopted by the canal authorities, if the public officers do their duty, I do not see why the canals will not be kept in first-rate repair. We have had a system of superintendents and contracts combined, which was very expensive, and which came in conflict in the management of canals. But, as I understand it, the contracts now require the contractors to do every kind of work that is to be done, and there is to be no outside work, no application to the Legislature in regard to any thing that is not a part of their contracts; and in case of break,

they are to pay up to seven thousand dollars instead of five thousand as they did under the old contracts.

Here the gavel fell, the gentleman's time having expired.

Mr. HALE—I propose the following as a substitute for the amendment of the gentleman from Onondaga [Mr. Hiscock]:

"The canal commissioners who shall be in office at the time of the adoption of this Constitution shall remain in office until the expiration of the term for which they were respectively elected; and there shall be elected annually thereafter one canal commissioner, who shall hold his office for three years."

If it shall be the sense of this Convention that we are to go back to the old system, it seems to me entirely unnecessary to provide, as I understand the gentleman's amendment does, for a new election of three canal commissioners. The object of the gentleman would better be effected by providing for the continuance in office of those who shall be in office at the time of the adoption of the Constitution.

Mr. HISCOCK—I accept the amendment.

Mr. BECKWITH—I trust that this amendment will not be adopted. Every one who has taken pains to look over the evidence laid upon our tables in regard to the management of the canals, must be satisfied that they have been managed very badly indeed, and that the present system is such that no responsibility can be traced to any particular individual. We have three canal commissioners having charge of the canals, and also an engineer and sub-engineers. They are all independent of each other, except the sub-engineers, and if one neglects his duty, the others cannot hold him to an account for it, and there is no way to correct the evil except by impeachment. Now let me refer to some facts. I was recently informed, by a gentleman who has been largely engaged in the transportation of property through the Champlain canal, that in order to get their goods through that canal with any degree of promptness, the company were obliged, at an expense of three or four hundred dollars a month, to employ men to attend the locks. Before they did that it took them, in getting out from Lake Champlain into the canal and back again, about forty-eight hours. There were only two men employed to attend those locks at Whitehall, and they were not men well fitted to the business, so that vessels were unnecessarily detained there. That company hired four active men, and it cost them three to four hundred dollars a month, and they had no difficulty in promptly passing those locks; but the gentleman said they made money out of it, because they no longer found any interruption to their business. This condition of things, owing, in a great degree, to the present contact system. I trust, therefore, that this measure will not be adopted. Every one knows that the present system has become, by the frauds and neglects, to use the language of a celebrated gentleman up north, a "stench in the nostrils of the people." It is said that under the superintendent system the canals cannot be kept in repair except by an expenditure on the part of the State three dollars to get the value of one dollar's

worth of work done. I will venture to say, sir, that it has cost the State, under the present system to keep the canals in repair, more than ten dollars to one dollar's worth of work that is actually done. What do they do under this system? They do not keep the canal in a passable condition.

Here the gavel fell, the gentleman's time having expired.

Mr. BELL—I had supposed, sir, that if any one consideration was more potential than another in the minds of the people and the Legislature in influencing the calling of this Convention, it was to reform the management of the canals; I had supposed that to reform our judiciary system, to reform the management of the canals and to reform our system of taxation, were among the chief considerations which led to the calling of this Convention. Now I do not wish to say a word against any gentleman who has had a controlling influence over the canals, but I do say that under the present system no efficient management of them can be expected. How do our large railroad companies manage their affairs? Do they appoint three principal superintendents to manage different sections of their road, or do they place the responsibility in a general superintendent? I might appeal to gentlemen on the floor here who have had large experience in the management of those large corporations, and they will all tell us that the management should be given to some one intelligent mind, that they cannot be properly carried on by three or four or five or six different superintendents; and that the greater the number of such persons, the worse management you will have. You divide the responsibility and that brings us precisely to where we have been during the last twenty years in the management of our canals. No efficiency, no responsibility, no intelligent head. When you put your hand upon one man, and inquire the cause of this mismanagement and prodigality, he will tell you that some other commissioner is responsible, and so you go on from one to another, finding no real responsibility anywhere, and no efficiency anywhere. The gentleman from Clinton [Mr. Beckwith] and his constituents have felt these evils in the management of the Champlain canal, and it has been experienced in the management of all our canals. A reform is called for by the people, and I hope this Convention will not go back on their constituents, but should they do so they may expect to have the Constitution defeated at the polls, for certainly this part of the Constitution at least will fail to receive the approval of the people.

Here the gavel fell, the gentleman's time having expired.

Mr. CHURCH—I desire to say a word or two more in regard to this matter, and as there has been another amendment offered, I suppose I have the privilege.

The PRESIDENT—The gentleman is in order.

Mr. CHURCH—This is not a matter to be passed over lightly or hastily. Now, I desire to say to the gentleman from Jefferson [Mr. Bell], and to the gentleman from Clinton [Mr. Beckwith], that I have no doubt that great evils have ex-

isted in relation to the management of canals. So evils have existed in relation to their management from the very commencement; but what is the remedy? That is the question that we are to decide. In my judgment, the remedy is with the people themselves. If they will not elect good and honest men to take charge of their canals, they must suffer the consequences. Look, for a moment, at the system which you organize under this section. (I speak the more freely on this subject now because I think the chances are quite equal that the political power will be in the hands of the party to which I belong; but I care not what party has it.) You appoint a superintendent of public works; he has constantly under his control four thousand men, along one thousand miles of canal, and within twenty-four hours he can, if he desires, increase the number to forty thousand men. He has the purchase of all the vast amount of material, iron, lumber, hardware, every thing which goes to make up the material necessary to keep the canals in repair. A man in this position will have sufficient patronage and power to control any State convention that ever assembled in this State, if not to control the election itself. Then, look at the opportunity which he has to commit frauds. Talk about the canal commissioners committing frauds! The frauds that they can commit are but a mere drop in the bucket compared with what this one man can do. And then, too, he could work in secret. He could make his plans in his own mind, and execute them throughout the State, and make any amount of money he pleased, and no man be the wiser for it. If your commissioners steal, or rob, or plunder, it becomes known, and they are arraigned before the bar of public opinion, and they go down dishonored to oblivion, and new men are selected to fill their places. But this man, appointed by the Governor, and not responsible to the people, having control of this immense amount of patronage along a thousand miles of canal, what could he not do? And you cannot get an exceptional man to fill this position; you cannot purify a man expressly for the purpose of discharging the duties of this office. You have to choose from the same humdrum that you choose your commissioners from. I do believe, sir, that if you organize this system, you will organize a system of public plunder which will prevent the payment of your canal debt for the next fifty years. Take such a man in an exciting presidential contest, what might he not do with this immense power for the purpose of carrying this State for a particular party, if it was understood that the election of the president depended upon the State of New York? Why, sir, a party would spend the bottom dollar of the revenues of the canals for such a purpose—any party would. I do not speak of one party more than another. That is what was done under the old system, and it would be done with tenfold more force and efficiency now.

Here the gavel fell, the gentleman's time having expired.

Mr. ALVORD—In reference to the first remark made by the gentleman from Orleans [Mr. Church], I have some doubt of his position. I am rather inclined to think the case which he

cites is the only case which they will have for many years; but in reference to the position that he has taken, I ask him to answer me this simple question. What are the facts in regard to this matter in the past history of the State? We have had three canal commissioners belonging to one political party having control of these thousand miles of canal, and these three commissioners belonging to the same political party have in vain undertaken to stem the tide of public opinion, and have been swept under by it. Here we have had three men belonging to the same party acting with a common purpose for a common end and with an influence so distributed throughout the State as to give them a power greater than any one man could have.

Mr. CHURCH—Will the gentleman allow me to answer him now?

Mr. ALVORD—No, sir. I will allow the gentleman to ask me a question.

Mr. CHURCH—I thought the gentleman asked me a question, and I was going to answer it [Laughter.]

Mr. ALVORD—I put it to the gentleman and to the Convention to answer this question in their own mind and I hope he will give the right answer by his vote, having in the mean time changed his mind upon this subject. [Laughter.] Another thing. In the large language of the gentleman from Orleans [Mr. Church], he talks about four thousand men being under the control of this superintendent along the line of the canals, and he says the number might be increased to forty thousand in twenty-four hours. Does not the gentleman know that there is not a man living who would dare to commit any such outrageous violation of the rights of the people of this State as to do any such thing. No four thousand men will be necessary upon the line of the canals in this State, when this system shall be in operation, except temporarily, perhaps, in case of a break. No such number will be necessary, and any attempt to go beyond the necessary number will be frowned down at once by the people. Now, another thing. It will be observed that the Governor is elected for two years, and this superintendent is to be appointed for five years; his term of office, therefore, expires between the gubernatorial elections, and therefore all consideration of his influence can have no effect upon the Governor whatever; and the appointment of this officer has to come under the supervision of another power. Every two years we elect our Senators, and they have to pass upon the recommendation of the Governor for this office. The Senators are from the people, and they, with the Governor, have the power of appointing this officer. If you have this canal commissioner or superintendent of public works appointed in the usual and ordinary way, nominated by a convention, the result will be, that the people will not nominate him at all. He will be nominated by a clique composed of a very few individuals, who will get together in number forty or number thirty—even of the Syracuse House or down at the Delavan House, and nominate the man, and then bring him out before the people, and the people will swallow the nomination; but if you appoint him

in this other way, the eyes of the whole State are upon the Senate and upon the Governor, and the responsibility rests upon the Governor of making a good nomination; and after the Governor has made his nomination, the Senators, acting under a due sense of their own responsibility, have to confirm or reject the nomination. It is safer by far, sir, to select a man in that way than in the way proposed by the gentleman from Orleans [Mr. Church].

Here the gavel fell, the gentleman's time having expired.

Mr. HISCOCK—I desire to make a single remark.

Mr. GRAVES—I rise to a point of order.

The PRESIDENT—The gentleman will state his point of order.

Mr. GRAVES—I understood that members were to speak but once upon the question.

The PRESIDENT—The gentleman from Onondaga [Mr. Hiscock] has not spoken upon the proposition of the gentleman from Essex [Mr. Hale]; and therefore the point of order is not well taken.

Mr. HISCOCK—I merely wish to answer a remark made by the gentleman from Onondaga [Mr. Alvord], in regard to this matter of divided responsibility; the remark that we want one man to be held responsible. Now I desire to ask the members of this Convention whether we are to have on the western division of the canal better management of the canals by some one man appointed by the Governor or recommended by the Governor to the Senate, located in some other portion of the State, than by a canal commissioner located on that division elected by the people, and very likely indicated by the people of that division, made up largely of forwarders? Is there not a direct responsibility on the part of this canal commissioner to the people of that section of the State, who are largely interested in the proper management of the canals? Or, go to Oswego, a city that depends in a large measure upon the commerce of the canals. They have one of their citizens as their commissioner. Is there a divided responsibility there, where the people all look to their neighbor having a common interest with him, and hold him responsible for the proper management of the portion of the canals under his control? The gentleman from Onondaga [Mr. Alvord] has alluded to the fact that we have had three canal commissioners belonging to one party, and he has asked what control they have exercised upon the politics of the State. I ask what control might they not have exercised if they had tenure of office for five years? They have had no consciousness that if they abused their power, they would shortly have to retire to private life, but with their present duration in office for one have seen enough of this carrying of accusations, by laborers loaded on State scows. Sir, we have had altogether too much of this mixing up of politics with the canals. I do not like it and the people of the State do not like it, and the moment you put the control of the canals into the hands of one man appointed by the Governor for five years, you take this matter out of the hands of the people entirely. The gentleman from Onondaga [Mr. Alvord] says that the term

of this officer expires in a year intermediate the gubernatorial elections. Well, sir, what is the result of that? Why it is that at the election of the Governor, during whose term of office this man is to be appointed, every available means will be used to pack the State convention to nominate a Governor who shall be in his interest. It is not to be even a half dozen politicians congregated in "No. Forty," but it is to be one man controlling the whole line of the Erie canal from Buffalo to Albany and the Oswego canal, and the Champlain canal, and every other canal.

Here the gavel fell, the gentleman's time having expired.

Mr. BERGEN—Sir, I am in favor of the one-man system in the management of our canals. In government, I would rather be governed by one man than by a triumvirate. I think there is more safety in it; and I think that our canals will be better managed under one individual than under three, without any one being responsible. If our canal officials are so corrupt as we hear they are, if they fatten upon the spoils of the State, why then, sir, it is cheaper to fatten a man once in five years than to furnish fatness for three or one annually. [Laughter.] Now, in relation to such an officer influencing politics. In the Brooklyn navy yard we have had five thousand men and over at a time under the control of one man, and yet he has not been able to govern the city of Brooklyn, nor even to influence its politics; and much less could such a man govern or control the politics of the State. Are we to be required to believe that this canal superintendent, with three or four thousand men in his employ, can govern this State? The gentleman from Onondaga [Mr. Hiscock] thinks that the State is to be governed hereafter on the lines of the canals. I tell the gentleman that in much less than twenty years the power will have departed from the interior of the State to the southern part of the State. The great cities of New York and Brooklyn will be the governing power instead of the country along the line of the canals. Leave this matter in the hands of one man, and let him be responsible. A tenure of five years is talked about for this officer. Sir, that is not long enough; I would have him hold it for ten or fifteen years, or during good behavior. In the engineer's department of Brooklyn, under the United States government, where the officers hold during good behavior, I hear of no corruption. No one is removed there while he faithfully does his duty; and no one is employed who will not perform his duty. But, on the other hand, in the Brooklyn navy yard, where the managers are political men, not one-half the labor is done for the pay, and corruption stalks in the navy yard, whereas, in the engineer's department, as I said before, I have never heard of corruption. I hope, therefore, that the Convention will retain the matter as it now stands, and give us one responsible man for this office. I would prefer that he should be elected rather than appointed by the Governor and Senate; but however he is chosen, let him be chosen for a long term, and be held responsible.

Mr. VAN CAMPEN—Mr. President, we have two large railroad corporations in our State that have an immense amount of capital, and they em

ploy a very large number of men. We have also other large corporations in the State for manufacturing purposes. Other States have similar corporations. If you go to Europe, you find like corporations there—companies wielding millions of dollars of capital, and with their business ramifying through every section of the country. Now, if you were to propose to any of these great institutions in this State, in other States or in Europe that their affairs should be managed by three commissioners, they would laugh in your face. Go to my respected friend from Albany [Mr. Corning] and ask him if they have three superintendents on the Central railroad. Go to other gentlemen who have been successful in business, who have accumulated large fortunes, and ask them how they would like that plan of managing their affairs?

Mr. HISCOCK—Do they not have a board of directors?

Mr. VAN CAMPEN—But these officers that you propose to have are to be charged with the execution of the laws of the State.

Mr. CHESEBRO—Does not the gentleman from Catteraugus [Mr. Van Campen] know that there are three superintendents now upon the Central railroad, each one of whom is charged with the care of a separate division of that road?

Mr. VAN CAMPEN—Does not the gentleman [Mr. Chesebro] know that there is one single superintendent who has charge of the whole road? I say, sir, that if you go to our own corporations or if you go to the corporations of Europe, and propose that their affairs shall be managed in this way, having three men to superintend a single work, they will laugh at you and tell you that it would never do, that in that way their business would be mismanaged, and that there would be nobody responsible. But under the other system where a single superintendent has charge, there is no trouble in fixing the responsibility upon him at once, and that is the only way we can have an efficient and satisfactory canal management. I do not believe, sir,—

Here the gavel fell, the gentleman's time having expired.

Mr. E. A. BROWN—Mr. President, in Committee of the Whole I have already stated my objections to this section. I objected then, and I object now to appointing this one canal commissioner, for he is a canal commissioner under another name. One ground of my objection was that it was a step toward European monarchical institutions, and my friend, Mr. Van Campen, who has just sat down, refers us to Europe where the one-man power prevails habitually, not for a term of five years but for life. In this case we are placing, by the appointment of the Governor and Senate, in the hands of one man all the powers that have been for years past, placed in the hands of at least four men—three canal commissioners and in some respects a State Engineer and Surveyor. Now it is said that the canal commissioners have been corrupt, that they have failed to do their duties efficiently, that the Champlain canal was not open in season last spring. The commissioner is not here to answer these charges and I shall say nothing about them; but, assuming them all to be true, the question comes up which

was stated by the gentleman from Orleans [Mr. Church]. What is the remedy? What remedy do you afford by the section under consideration, which takes away this power from three men elected for the term of three years who are responsible to the people for the manner in which they discharge their duties, and place it in the hands of one man who holds his office for five years and is not responsible to the people, and who has the power of appointing four assistants to aid him in the discharge of his duties, or if he happens to be a corrupt man, to aid him in carrying forward his corruption? We are told that this man is to be held responsible. I ask in the name of God to whom is he to be held responsible?

Here the gavel fell, the gentleman's time having expired.

Mr. AXTELL—I move the previous question upon this section.

A sufficient number voting in the affirmative, the previous question was seconded and the main question ordered.

The question was put on the substitute offered by Mr. Hiscock as amended by Mr. Hale, and it was declared lost, by the following vote:

Ayes—Messrs. Baker, Barto, E. Brooks, E. P. Brooks, E. A. Brown, Carpenter, Cassidy, Chesebro, Church, Clark, Colahan, Corbett, Corning, Hadley, Hale, Hiscock, Livingston, McDonald, Monell, Silvester, Spencer, Veeder, Wales, Young—24.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Axtell, Ballard, Barker, Beadle, Beals, Beckwith, Bell, Bergen, Bickford, Bowen, W. C. Brown, Case, Cochran, Cooke, Curtis, Daly, Duganne, C. C. Dwight, Eddy, Everts, Farnum, Ferry, Field, Fowler, Fuller, Fullerton, Gould, Graves, Hammond, Hand, Hardenburgh, Hatch, Hitchcock, Houston, Kinney, A. Lawrence, M. H. Lawrence, Lee, Lowrey, Ludington, Mattice, Merrill, Miller, Potter, President, Prindle, Rathbun, Reynolds, Root, Rumsey, Smith, Stratton, Tappen, S. Townsend, Van Campen, Van Cott, Wakeman, Wickham, Williams—65.

The question then recurred on the amendment offered by Mr. Cooke.

Mr. COCHRAN—Mr. President, if it is in order—

The PRESIDENT—The Chair would inform the gentleman that neither debate nor amendment is now in order, the previous question having been ordered.

Mr. COCHRAN—I wish to move to reconsider the vote by which the amendment offered by my colleague [Mr. Tappen], proposing that the superintendent of public works should be elected and not appointed, was lost.

The PRESIDENT—The motion will be received and laid on the table under the rule.

The question was put on the amendment of Mr. Cooke, to insert after the word *Legislature*, in the fourth line, the words "He shall be required by law to give security for the faithful execution of his office, before entering on the duties thereof," which was declared carried.

The question was then put on the motion of Mr. Chesebro to strike out this section, upon

which the ayes and noes had been ordered, and it was declared lost, by the following vote.

Ayes—Messrs. Baker, Barto, E. Brooks, E. P. Brooks, E. A. Brown, Cassidy, Chesebro, Church, Clarke, Colahan, Corning, Hadley, Hiseock, Livingston, Silvester, Tappen, Veeder, Wales, Wickham, Young—20.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Axtell, Ballard, Barker, Beadle, Beals, Beckwith, Bell, Bergen, Bickford, Bowen, W. C. Brown, Carpenter, Case, Cochran, Cooke, Corbett, Curtis, Daly, Duganne, C. C. Dwight, Eddy, Evarts, Farnham, Ferry, Field, Fowler, Fuller, Fullerton, Gould, Graves, Hale, Hammond, Hand, Hardenburgh, Hatch, Hitchcock, Houston, Kinney, A. Lawrence, M. H. Lawrence, Lee, Lowrey, Ludington, Mattice, McDonald, Merrill, Miller, Potter, President, Prindle, Rathbun, Reynolds, Root, Rumsey, Smith, Spencer, Stratton, S. Townsend, Van Campen, Van Cott, Wakeman, Williams—68.

The SECRETARY read the fourth section as follows:

SEC. 4. The canal board and the contracting board are abrogated; the office of canal commissioner and canal appraiser are hereby abolished, to take effect on the first day of January, eighteen hundred and sixty-eight. Until the appointment of a superintendent of public works, as herein provided, and the organization of a court of claims, as provided for by this Constitution, the canals of this State shall remain in charge of the officers now in charge of the same, whose powers and duties in relation thereto shall be continued until such superintendent shall enter upon the duties of his office.

Mr. VAN CAMPEN—I move to amend by changing "sixty-eight" in the fourth line to "sixty-nine."

The question was put on the motion of Mr. Van Campen, which was declared carried.

Mr. E. P. BROOKS—I move to amend by striking out line ten and inserting in lieu thereof, the words, "and such court shall enter upon their duties respectively." As it now reads it provides that the canal appraisers are to hold their office until the appointment of the superintendent of public works.

Mr. BICKFORD—I hope that amendment will not prevail.

The question was put on the amendment of Mr. E. P. Brooks, and it was declared carried.

The SECRETARY read the fifth section, as follows:

"No money shall be appropriated or paid by the State, or out of the canal revenues, for the construction or maintenance of any bridge, except for the use of the State, over any of the completed State canals or feeders connected therewith, at any point where a bridge was not located and maintained at the expense of the State prior to the first day of January, eighteen hundred and sixty-seven. Nor for any damages or injury sustained in the navigation or use of any of the canals of this State or feeders or structures connected therewith. Nor for any extra allowance or compensation to any person, for or upon any contract after the

services shall have been rendered, or contract entered into. The immunity of the State, as above provided, shall not at any time be waived by the Legislature, or any public officer or body. No claim for damages not growing out of the maintenance of the canals or feeders connected therewith, shall be heard or allowed, except: the same shall be made within two years after the claim shall arise, unless the party claimant shall be under legal disability, and in such case the claim shall be made within two years after the removal of such disability."

Mr. BICKFORD—I renew the amendment I offered in Committee of the Whole, striking out the section to the figures "1867," in the seventh line. The provision proposed to be stricken out prohibits the building of any bridge over any portion of the State canals or feeders, where a bridge was not located and maintained, at the expense of the State, prior to the first day of January, 1867. I will not go over the argument which was had in Committee of the Whole, where the vote was pretty close. I will merely say that there may be cases where it would be a matter of justice for the State to build a bridge where it has not built one heretofore; and the only excuse given in this section for not doing justice in the future, is that the State has not done justice in the past. That is no excuse at all. If the State has heretofore failed to do justice, that is no reason why it should not do justice hereafter. The State has appropriated and controls the Black river as a part of these canals, and maintains bridges over it. There have been, already, two acts passed by the Legislature appropriating money to build a bridge over the river between Drum creek and Croghan. I mention this merely to show that the State has acknowledged, in all the departments of the government, the justice of this claim for a bridge at the place mentioned. It is proposed to cut off such power from the Legislature, and the only reason assigned is that the State has heretofore neglected to do justice. I hope this Convention will not deliberately sanction the principle that it will not do justice merely because justice has not been done in the past.

Mr. ALVORD—This question was very elaborately argued upon each side in Committee of the Whole. I merely wish to correct the gentleman when he undertakes to say that the vote on this question, in committee, was very close. It was not. I wish to say to this Convention that for years there has been a refusal on the part of the Legislature to build any bridge over any of the canals or feeders of this State, unless there had been an original highway or a street cut off by the building of the canal. In all cases where there have been bridges built subsequently to the building of the canals, for the last eight years, it has been done upon the pretext that there was an existing highway before the canal was built, or a street which had been laid out in a city or village that had been cut off by the canal. The reason this provision is inserted in this section is to determine the question for all time to come that the State shall not build bridges except where a highway existed prior to the building of the canal. With reference to the place that has been mentioned by the gentleman from Jefferson [Mr.

Bickford] and where he desires a bridge, I will say there has never been a bridge. There has always been a ferry, and he can have a ferry there to-day. I hope the people will continue to have a ferry.

Mr. ARCHER—I move the previous question.

The question was put on the motion of Mr. Archer, and it was declared carried.

The question was then put on the amendment of Mr. Bickford, and it was declared lost.

The question recurred on the adoption of the section.

Mr. ALVORD—Although the previous question has been moved, it is evident there has been a mistake in printing by inserting the word "not" in the fifteenth line; the word ought to be stricken out.

There being no objection, the amendment was made as suggested.

The question was then put on the adoption of the section, and it was declared adopted.

The SECRETARY then read the next section as follows:

SEC. 6. In all contracts for materials or for work done or to be executed upon the canals of this State, no informal bid shall be rejected until the party or parties making the same shall have had notice of privilege to amend or correct the same; and no alteration of the plan or any specification shall be made before or after the execution of the contract, except with the consent of the commissioners of the canal fund and of the superintendent of public works, or a majority of the same.

Mr. ALVORD—Inasmuch as the second section has been so amended, I move to amend the first section by striking out the words "the auditor of the canal department."

The question was put on the amendment of Mr. Alvord, and it was declared adopted.

The question recurred on the adoption of the article as amended.

Mr. RUMSEY—In section 15 of the report of the Committee on the Powers and Duties of the Legislature is this provision, which has been adopted:

The Legislature shall not grant any extra compensation to any public officer, servant, agent or contractor, after the service shall have been rendered, or the contract entered into, nor increase or diminish the compensation of any public officer, agent, contractor or servant during his time of service.

In section 5 of this article is a complete repetition of the above sentence, commencing with the word "nor." It evidently does not belong in the section.

The PRESIDENT—The Chair will state that the error will be corrected by the Committee on Revision.

There being no further amendments, the question was then put on the adoption of the article, and it was declared adopted, and was referred to the Select Committee on Revision.

Mr. VAN CAMPEN—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Van Campen, and it was declared carried.

So the Convention adjourned.

THURSDAY, December 5, 1867.

The Convention met at ten o'clock A. M., pursuant to adjournment.

Prayer was offered by Rev. Mr. ABBOT.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. GOULD asked indefinite leave of absence for Mr. Ketcham, who was detained at home by sickness.

There being no objection, leave was granted.

Mr. C. C. DWIGHT presented a memorial praying for the abolition of the Board of Regents of the University.

Which was referred to the Committee of the Whole.

Mr. E. A. BROWN presented a like memorial. Which took a like reference.

Mr. BERGEN presented a like memorial.

Which took a like reference.

Mr. BAKER presented two like memorials.

Which took a like reference.

Mr. MERRITT presented a like memorial.

Which took a like reference.

Mr. BEALS presented a like memorial.

Which took a like reference.

Mr. BALLARD presented two like memorials.

Which took a like reference.

The PRESIDENT presented a like memorial.

Which took a like reference.

Mr. DALY presented a remonstrance against the abolition of the Board of Regents of the University.

Which took a like reference.

Mr. AXTELL presented a like remonstrance.

Which took a like reference.

Mr. FARNUM presented a like remonstrance.

Which took a like reference.

Mr. C. L. ALLEN—I present the memorial of certain inhabitants of White Plains, asking that the surplus of revenues from the canals may be applied to the support of the common schools of the State. At the request of some of the petitioners, I will state the ground of the petition. There is a great inequality in the taxes now levied and raised for the support of common schools. In the larger districts a sufficient sum is raised almost to pay the teachers' wages, while in the smaller districts the tax is very heavy and unequal.

The memorial was referred to the Committee of the Whole on the report of the Committee on Education.

Mr. ALVORD—The Committee on Revision have had no meeting from the early part of the session, because of the absence of its members of whom there are but three now in attendance, and two of them will be absent for the remainder of the session. The labor will be very considerable; and in consequence of the continued absence of a majority of the Committee, we have been unable to enter upon the duties at all as yet. It is thought advisable on the part of the Convention that we should proceed with that work; and I therefore move that there be added to the committee, by the Chair, four other members.

Mr. VAN CAMPEN—What is the number of that committee at present?

The PRESIDENT—It consists of five.

Mr. ALVORD—There are but three of them

here now, and most of the time there has been but one.

Mr. VAN CAMPEN—Is it proposed to increase the number to nine?

Mr. ALVORD—It is.

The question was put upon the motion of Mr. Alvord, and it was declared carried.

Mr. GOULD—I ask for the consideration of the resolution offered by me day before yesterday, on the subject of keeping a quorum.

The PRESIDENT—That resolution was laid upon the table by a vote of the Convention.

Mr. GOULD—I move that it be taken up from the table for consideration.

Mr. FULLER—I rise to a point of order, that, if I remember rightly, it was laid upon the table until the 24th day of December.

The PRESIDENT—No, sir; that was a different resolution.

Mr. SEAVER—The motion was, that it be laid upon the table for the day.

The PRESIDENT—The Chair is aware of that fact. The question now is upon taking it from the table.

Mr. SEAVER demanded the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the motion of Mr. Gould, to take the resolution from the table, and it was declared carried, by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Alvord, Baker, Beals, Bell, Bickford, E. P. Brooks, Case, Curtis, Duganne, Edly, Ely, Fernum, Ferry, Field, Fowler, Fullerton, Goodrich, Gould, Graves, Hale, Hammond, Haud, Harris, Kinney, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Miller, Prindle, Reynolds, Rumsey, L. W. Russell, Seaver, Smith, Stratton, S. Townsend, Van Cott, Wakeman, Wales, Williams, Young—47.

Noes—Messrs. N. M. Allen, Andrews, Axtell, Ballard, Barker, Barto, Beadle, Beckwith, Bergen, Bowen, E. Brooks, E. A. Brown, W. C. Brown, Carpenter, Chertree, Church, Clarke, Comstock, Cooke, Corbett, Corning, Daly, C. G. Dwight, Francis, Fuller, Hadley, Hiseock, Hitchcock, Houston, Monell, Morris, Murphy, A. J. Parker, Potter, President, Rathbun, Rogers, Root, Roy, Silvester, Spencer, M. I. Townsend, Van Campen, Veeder, Wickham—45.

The question was stated upon the adoption of the resolution, which was read as follows:

Resolved, That hereafter the roll of members of this Convention be called by the Secretary at 12 o'clock M., and that the President be requested to withhold his certificate of attendance from all members who do not answer to their names.

Mr. DUGANNE—I offer the following as a substitute:

Resolved, That the Comptroller be requested to inform the Convention whether, in his opinion, the provision in the act calling this Convention withholding *per diem* compensation for more than three days of adjournment, does not rightfully apply to delegates who shall absent themselves for more than three days from attendance on the daily sessions.

Mr. GOULD—I hope the original resolution will be carried. I hope that gentlemen who really

and earnestly desire to finish the work of this Convention will vote for it. During the interval which elapsed between the long vacation and the last vacation for Thanksgiving, the average attendance upon each day was only 84; and as every one knows we were compelled several times to adjourn for the want of a quorum. It is certainly an unpleasant thing to assert or to intimate that any gentleman of this Convention would be at all influenced by the cutting off of his pay. But still, when we find that so many of the members of this Convention are absent from their duties, it does seem to me that it is our duty to the people and our duty to ourselves to make use of every effort which is possible to keep a quorum together until the Constitution shall have been finally framed. I hope therefore that the resolution will be passed in its original form.

Mr. DUGANNE—I do not propose to offer my amendment as a substitute, as I said, but I offer it as an amendment. I am quite willing that the original motion shall pass; but I think this ought to pass also; because it is well known that gentlemen who are delegates to this Convention have persistently absented themselves for weeks and months, while those who have remained here and been faithful, have been compelled to have their attendance used as a guaranty for the payment of the *per diem* compensation of the absentees.

The PRESIDENT—The Chair must arrest the remarks of the gentleman from New York [Mr. Duganne]. His amendment, calling for information from a State officer, must lie over for consideration under the rule. The question recurs upon the resolution offered by the gentleman from Columbia [Mr. Gould].

Mr. FEERY—For one, until recently, I have opposed any such movement as the present. But our attendance has been thin, and there has been so much difficulty in keeping a quorum here, and so many expedients have been resorted to to effect it, that I am now disposed to favor it. I am staying here myself at a sacrifice of my pecuniary interests which is really serious. I stay for the purpose of trying to finish up this business. I should be very glad to be away. I insist that it is a matter of justice on the part of those who are anxious to do the work here, to take some measure to secure the attendance of enough members to enable us to transact our business. It is a matter of justice also toward the State. I know that the people complain. I have heard frequent complaints of the adjournment of the Convention from time to time for want of a quorum, while the fact is patent to every body that the State is paying daily for the whole 160 members of the Convention. I think it is due to ourselves, to our own credit, that some step should be taken to remove these causes of complaint. These considerations induce me now to vote for a measure of this kind. I do not believe in any niggardly policy to be pursued by the State; and if we could secure a respectable attendance, so that we could get along comfortably, if out of 160 members we could only be sure of 81, so that we might always have a quorum, and could do business, I would not say a word. But we are struggling on from day to day and using every

means to keep a quorum here; and I insist that it is due to those who stay here at the sacrifice of their own interests that there should be some means taken to secure a quorum if it can be done. If the friends of this Constitutional Convention, who feel an interest in its success and credit before the people, can take no measure to keep a quorum here, I shall feel at liberty hereafter to consult my own interests with regard to my attendance.

Mr. HALE—I call for a division of the question, and I wish to say a word with regard to it. I voted with the majority to take this proposition from the table; I think the provision for calling the roll may be useful; but as to the latter part of the provision, that the President withhold his certificate of attendance, I do not see how under the statute in regard to the pay of members, any such provision, if passed by the Convention, can amount to any thing.

Mr. BICKFORD—Is it not in the power of the Convention to impose a penalty for non-attendance, and may not that penalty be the forfeiture of their pay?

Mr. HALE—The question the gentlemen asks it is not necessary for me to answer, because the resolution before the Convention does not propose to fix a penalty for the absence from the Convention, but directs the President to withhold a certain certificate. The law does say that every member of the Convention shall be entitled to six dollars for each day of the Convention, from the first to the last, not including any recess of over three days. I would like to know how it is in our power to direct the President to withhold a certificate. The law does not direct that the certificate of the President shall be a condition precedent to getting paid. Such a resolution, if we pass it, in the first place directs the President to withhold the certificate; but if the President does withhold his certificate, how does that affect the question of the delegates being entitled to pay? The statute says they shall have their pay. It does not say that their pay shall depend upon the President's giving a certificate. I am as anxious as any body to secure the attendance of a quorum. I think I have been present at every session but one since the adjournment to the twelfth of November. But I am entirely opposed to the adoption by the Convention of a resolution which must be, from necessity, entirely useless.

Mr. E. BROOKS—I have endeavored to be as punctual in my attendance since the Convention met in June last, as perhaps any member of the body. It has been stated by the gentleman from Otsego [Mr. Ferry] that there is great complaint of the Convention. I believe that we do not stand in the estimation of the great body of the people, in perhaps that favorable light that most of us would wish to appear; but I think that the resolution offered by my friend from Columbia [Mr. Gould] is calculated to bring this Convention into still greater contempt, and that it is a reflection upon the great body of the members, absent and present. It is not necessary for us always to have a very large number of members present. The experience of the Convention proves that when there are some ninety or a hundred members present

and participating in the deliberations, or even with a less number, we transact a great deal more business than could be done if the whole one hundred and sixty were in attendance. I hope, therefore, that the resolution will not be adopted. It is offered at a most inopportune time. There are considerably over a hundred delegates in attendance now. There were one hundred and three in our deliberations yesterday, and we made more progress then perhaps than at any session that has been held. I do not think it is called for by any thing that has transpired. I therefore move to lay the resolution upon the table.

The question was put upon the adoption of the motion of Mr. Brooks, and it was declared carried.

Mr. A. J. PARKER offered the following resolution:

Resolved, That the Committee on Revision be instructed to strike from the article on finance all the provisions which regulate or prescribe a mode for the assessment of taxes.

Which was laid on the table at the request of the mover.

The PRESIDENT announced the special order of the day, being the consideration of the report of the Committee of the Whole on the report of the Committee on the Powers and Duties of the Legislature.

Mr. ALVORD—I move that the debate on this article be limited to five minute speeches, and that no person be permitted to speak more than once on any one amendment.

The PRESIDENT—Which the gentleman did move on the twenty-first of November last, when it was adopted.

Mr. RATHBUN—I have some interest in that report, and I am aware that there is to be considerable contest in regard to it. I am a good deal out of condition this morning for any kind of business, and I shall be very glad indeed if the Convention would lay it aside and take up the report of the Committee on the Judiciary. I will move to postpone it until to-morrow morning at ten o'clock.

Mr. E. BROOKS moved to amend the motion, so as to make it the special order for this evening at seven o'clock.

The question was put on the amendment offered by Mr. E. Brooks, and it was declared lost.

Mr. RATHBUN—I will make my motion to postpone until twelve o'clock.

Mr. VEEDER—I am much interested in this report and desire to participate in the debate. I am going away to-morrow.

Mr. RATHBUN—Then I really hope it will be postponed, for we shall get along a great deal faster. [Laughter.]

Mr. ALVORD—I trust the motion of the gentleman from Cayuga [Mr. Rathbun] will prevail. He is chairman of the committee, or interested in the debate, and has participated in the debate very much to the advantage of the Convention heretofore. He is evidently laboring under illness, and I think it would be entirely proper to give him the postponement he desires.

The question was put on the motion of Mr. Rathbun, to postpone until twelve o'clock to-morrow, and it was declared carried.

The Convention again resolved itself into Committee of the Whole on the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN stated the pending question to be upon the adoption of the amendment offered by Mr. Smith, as amended on motion of Mr. A. J. Parker and Mr. Prindle.

Mr. DALY—In considering the plan submitted by the committee, I wish to call attention to the changes which were made in our judicial system by the Conventions of 1821 and 1846, and to the practical effects which these changes produced, as shown in our subsequent experience. I desire to do this as one means of testing the merits of the plan proposed by the committee, and because, independent of their plan, or of any plan which may be proposed, the facts to which I wish to call attention, will be found instructive and suggestive. There was no complaint in 1821 that justice was not well administered; on the contrary, it was universally admitted that the judges had been able, learned and impartial, under a system which began with John Jay as chief justice, and ended with Chancellor Kent and Chief Justice Spencer. It could not well have been otherwise, for no body of men in any other State of this Union, or in a given period of time in any country, had done more to elevate and advance the science of jurisprudence. But the objection taken to the system was that the judges constituted a council of revision, without whose approval no act of the Legislature could become a law. This gave the judges a control over the political action of the State, the effect of which was to make them active politicians and partisans, and a very serious charge was made against one of the judges, impugning his action as a member of that body. In fact, it gave rise to so much ill feeling and complaint, that the Convention of 1821 determined to separate the judges thereafter entirely from politics and confine them strictly to their judicial duties. The sense of the Convention upon the subject was taken by ayes and noes, and every member present, one hundred and twenty-one including the judges, voted for the resolution. Judge Edmonds in a recent letter refers to this fact in our judicial history, and, speaking from his own recollection, says so universal and strong was public sentiment upon this subject, that from that time until the Constitution of 1846, no judge dare take any part whatever in politics, and for one of them to have presided at a political meeting, would have called down upon him a storm of public indignation. He then remarks, within the last six or seven years, the name of almost every judge in the city of New York has been heralded in the newspapers as president or vice-president of some political meeting, not from their own choice in all cases, but because the exigencies of party demanded it, and he pertinently asks, What power was there to sustain the judges in a refusal to comply? We have thus, Mr. Chairman, the fact that the Convention of 1821 unanimously resolved to separate the judges from any necessary connection with party politics or its management, while the Convention of 1846 revived the very evil, and in a worse form, which the former Convention

was so anxious to avoid. The Convention of 1821 determined that a class of officers whose duty it is to pass upon questions involving the property, the liberty and the lives of their fellow-citizens, should not be active political partisans, while the latter Convention made the judges wholly dependent upon their political influence both for their elevation to and for their continuance in office, and they did this—I speak it advisedly—after a careful perusal of the debates, without any expectation that such would be the practical result. The effect which this change has produced I shall remark upon hereafter. The Convention of 1846 was called chiefly upon the ground that our judicial system was insufficient to meet the demands upon it. There was a desire to get rid of the court of errors as a cumbersome, very expensive, and uncertain tribunal, for the discharge of the functions of the highest court of the State; the court of chancery was heavily clogged with business and was unpopular with the bar and the people, while the supreme court was so incumbered, having one thousand causes on its calendar, waiting to be heard, that a reorganization and enlargement of the court was indispensable. But in addition to these substantial reasons there was at that period a restless desire for change in every thing. With the election of President Polk, the agitation of the great questions of a United States bank and of a protective tariff ceased. The Mexican war had not yet begun, and in the absence of any real question of political importance, the attention of public writers and speakers was turned to the consideration of such subjects as the nature of republican government and of the improvement of which it was still susceptible. It was not enough that we had the best government upon the earth, or that the world had ever seen, but we must have something better, and consequently all kinds of suggestions for the amendment and improvement of our system of government were put forth. It was a period of political theories not drawn from the experience and the teachings of the past, but which had their origin in the fertile region of political speculation, and were attractive from their novelty and plausibility. Among these was the theory that public officers of every class should be elected by the people, and for very short terms, that they might always be kept under a constant sense of their responsibility to the power which created them, a theory which had its foundation in an honest desire to secure faithful and efficient officers, but which, in its practical operation, has been attended with consequences which, if imagined, or suggested, would have been treated as absurdly improbable. These were the subjects, respecting government and its practical administration, which occupied men's thoughts, though there were then deep causes at work unseen or unfelt in their progressive development which afterward led to a civil conflict, the greatest, the mightiest, and most important that ever occurred in the history of mankind. It was in this unsettled, confused, and as yet undirected state of political thought and action that the Convention of 1846 was called. I have stated the chief reason for calling

it. I will now state concisely, having read the whole of the debates upon the judiciary, which lasted continuously in morning and evening session for more than a month, and to many of which I was a listener, what, in the judgment of a majority of the Convention, were the defects in the previous judicial system and what were the remedies to be applied. There was no complaint in respect to the permanent judges of the higher court, either individually or as a body. It was admitted that they were men of ability, of great industry, and of integrity; and that though no one of them may have come up to the standard of some of the more distinguished among his predecessors, they had upon the whole fairly maintained the high character which was accorded to the judicial decisions of the State, in other States and in other countries. The objection made was not to them, but to the judges of the inferior courts and to alleged defects in the system, which, concisely stated, were as follows:

1. That the union of legislators and judges in the court of errors was incongruous. That the judicial function was distinct from the legislative, and that the latter should be separated from the former in the constitution of the highest judicial tribunal in the State.

2. That legal and equitable remedies should be administered in one and the same tribunal, and that a separate court of chancery was unnecessary.

3. That the change made by the Constitution of 1821, of having one class of judges of the supreme court for the trial of causes, called circuit judges, and another class for the hearing of appeals, had worked badly, and had been universally condemned.

"For years," said Mr. Jordan, a leading member of the Convention, "we had been complaining that our judges were excluded from the circuits, and that they have not an opportunity of mingling with the business affairs of the people, to see their operations and their circumstances as they exist, and which it was important for them to know to secure an enlightened administration of justice."

And the same views were expressed by every member of that Convention who referred to that feature in the previous system.

4. That a single supreme court, held at four different places in the State, composed of three judges, was insufficient for the dispatch of public business, and inconvenient to the bar, and that the remedy was a court of many branches and of numerous judges, which could be held at the same time in different parts of the State; the judges of which should, by a legislative regulation, rotate in order from one part of the State to the other, so that the court would never be composed of the same judges.

This plan was adopted, and the Legislature of 1841 passed an act for the rotation of the judges; but after a year's trial, it had to be abandoned as wholly impracticable.

5. That a court of appeals, one-half of the members of which should be composed of permanent judges and the other half changed every year by the introduction into it of four judges of

the supreme court, would be a most efficient tribunal.

This feature, of all others, was the one which was most commended, and it is now, by common consent, acknowledged to have been the greatest failure.

6. That the courts of common pleas, composed of five judges appointed for five years, the first judge being a lawyer and the other four usually laymen, ignorant of the law and incapable of administering it accurately, was an inefficient unsatisfactory and most expensive tribunal, the cost of supporting which, with the exception of the court of errors, was as great as that of all the other courts put together.

7. The increase of litigation, which would be greatly diminished by the establishment throughout the State of courts of conciliation.

8. The diminution of books of reports, which could and would be diminished by the system adopted by the Convention. Instead of eight or ten volumes, it was said we would probably have one volume in three years properly considered and carefully made up.

9. The election of the judges for short terms, that they might always be directly responsible to the power which placed them in office, for if a man was a good judge, it was said, the people would always be glad to re-elect him, and if he turned out to be a bad one, they could easily get rid of him.

We have in the Constitution before us the system that is the embodiment of these views and opinions. The following results were claimed for it by its advocates in the Convention:

1. That cases could be carried through the supreme court and the court of appeals in twelve months. It now takes three years before a case can be heard even in the court of appeals.

SEVERAL MEMBERS—Six years.

2. That there would be but few appeals from the supreme court, because no frivolous one would be presented to a court of that high character, as there would be no chance of success.

3. That the court would make but few mistakes, as the judges would have ample time for examination, and would possess the confidence of the community. There would not be one case in ten appealed, said a distinguished lawyer in the Convention, where there had formerly been.

It was objected that there would not be any uniformity of decision among the eight different and distinct branches of the supreme court, and that this might lead to perplexity and uncertainty. I will give the answer of the leading advocate of the system. "That these judges," he said, "learned in the law, familiar with the decisions of the appellate court, desirous of doing their duty, would establish conflicting rules, was out of the question. They might make mistakes, but the effect would be temporary as long as the court of appeals regulated all.

4. That the court of appeals would be ample for all purposes, and would never be overburdened with business.

5. That justice would be brought to every man's door, and that the poorest man would have his case disposed of by a supreme court composed of learned judges, satisfactorily, rapidly,

and with little expense. All this appears very strange to us now, but these views were expressed by the ablest members of the Convention, one of whom, a prominent member of the Judiciary Committee and an experienced lawyer, closed a very long and a very plausible argument with the peroration that the system adopted by the Convention might remain as a monument of its wisdom while the earth endured. It has been the result of our experience that certain features of this system have proved satisfactory. The abolition of the court of errors, the union of legal and equitable remedies in one tribunal, the territorial division of the supreme court, and the substitution of a single county judge for the court of common pleas. As respects the diminution of litigation by courts of conciliation it is sufficient to say that a court of that character was created by the Legislature for three years with the privilege of renewing it if applied for. No application to renew it was ever made, and in respect to the diminution of books of reports I will simply state that from 1794 to 1846, fifty-two years, there had appeared one hundred and eleven volumes of reports, while from 1846 to the present time, twenty years, there has been published one hundred and fifty-six volumes, or nearly one-third more in less than one-half the time. Appeals in the last twenty years have been proportionably larger than during any previous period in our history; and in respect to conflict of decisions, I will simply quote the language of Judge Edmonds in his recent letter: "Any one," he says, "at all familiar with the action of our courts during the last twenty years will be able to realize a lamentable conflict of adjudication and how impossible it has often been to know what the law was." If we take the books of reports as a test, the judicial business of the State would seem to have doubled in twenty years. This could not arise from the increase in population. During the twenty years before 1846 about one million was added to the population of the State. During the last twenty years about 1,200,000, a difference of 200,000, not in itself sufficient to account for the fact that the judicial business has doubled during the latter period. But the last twenty years has been a period of unusual business activity, and, before the war, of great prosperity, which may in some degree account for it, but not entirely. Before 1846 we had four hundred and twenty-nine judges—of these, two hundred and forty-seven were what might be called supernumerary judges—of the courts of common pleas, and of the county court and court of sessions in the city of New York, and there were thirty-two Senators in the court of errors, with the Lieutenant-Governor. If we allow eight Senators for the working members of that court, which was about the number that usually delivered opinions, it would leave about one hundred and eighty judges as the effective working judicial force of the State at that time. But there were then also three hundred and fifty-six masters and examiners in chancery, who did a large proportion of the business in equity suits, which is now performed by the judges and by referees in such cases as are referable, and we had also supreme court commis-

sioners in aid of the judges of the court. We have now, all told, two hundred and ninety-five judges, one hundred and twenty of whom are justices of the peace, sitting as judges of the sessions in each county. So that, with a population which has increased 1,200,000, we have no greater judicial force than we had in 1846. A large proportion of the force was no doubt supernumerary, deducting which I have put the effective force at one hundred and eighty, and if we deduct the judges of the sessions as supernumerary from our present force, it reduces it to one hundred and seventy-five, which is only five more than was the working force before; to say nothing of masters and examiners in chancery, supreme court commissioners and referees. With a judicial force, therefore, actually less, and with an increase of population and of business, the work has been less perfectly done, hence the conflict of decisions and the increase of appeals, with an overworked and overburdened court of appeals. So much for the prediction of the framers of the judicial system of 1846. In ten years after the adoption of the Constitution of 1846 it was found that the judicial system established by it was wholly ineffectual to meet the requirements of the State, and consequently in 1858, nearly ten years ago, provision was made by the Legislature for the calling of a Convention to revise the Constitution, in anticipation of the time provided for in the instrument itself. In the month of November of that year the question was submitted to the people whether they would call a Convention, and the response by the popular vote was in the negative. It may be that the majority of the people thought that the system had not been sufficiently tried, or it may be that they regarded the times as unpropitious, as the clouds were then gathering which ultimately burst in the storm of war and rebellion, though it was two years prior to the election of Abraham Lincoln; or it may be that the majority of the people were not sufficiently impressed with the defects in our judicial system, and preferred to wait until the time provided for in the Constitution, but whatever may have been the reason or reasons, they decided by a majority of 5,360, upon a very light vote, not to call a Convention. In 1859 the people by a large majority amended the Constitution so as to provide a loan to pay off the State debt, and as the defects of our judicial system increased with every year and was chiefly apparent in the enormous accumulation of business in the court of appeals, the Legislature of 1859 passed an act for submitting to the people an amendment creating six instead of four judges of the court of appeals, who, with the judges thereafter to be elected were to hold their office for twelve years; but the question was never submitted to the people, as the Legislature of 1860 did not pass the necessary confirmatory act. Things continued in this condition until 1863, when the Legislature, deeply impressed with the indispensable necessity of some remedy, passed an act for amending the Constitution by the creation of five commissioners, to be appointed by the Governor, for the clearing off of the business of the court of appeals and a confirmatory act

having been passed by the next Legislature, in 1864, the question was submitted to the people in the fall of that year, and in a light vote, but by a very large majority, they refused to adopt the amendment. The people certainly were not ignorant of the condition of things in the court of appeals, for it had been the subject of frequent discussions in the Legislature and of comment in the newspapers for several years, and as it was not their interest that this obstruction and delay in the administration of justice should exist, it could not be their wish that it should continue. What, then, is the inference from their refusing to adopt the amendment? It is that a reconstruction of the whole judicial system was necessary; that it was radically defective, and that it could not be patched up by amendments or temporary expedients. That the remedy was to call a Constitutional Convention, and when that question was submitted to them three years afterward they called the present Convention. Now, what are the defects we are called upon to remedy? The first is the enormous accumulation of causes in the court of appeals, and the obstruction and delay thereby occasioned. This proceeds, in my judgment, from two causes; first, want of confidence in the courts below, and secondly, the hope of succeeding in an appellate tribunal, the one half of the members of which is changed every year. This feature in the organization of the court, not only induces appeals, but it prevents the court from being as efficient as it ought to be. It takes six months before the four judges who come in can work efficiently with the four permanent judges and in six months they go out and four new judges come in. A court which is thus constantly changing, lacks the stability, cohesiveness and unity which a permanent court would have, and is without the benefit of accumulated experience, so essential in any court and especially in the highest court of the State. Where the judges of the court are permanent they become known and respected for their learning and ability, which gives to the court a weight and authority that a court can never have that changes one-half of its members every year. The next cause is the want of confidence in the decisions of the supreme court. Great respect is entertained for the opinions of certain judges, but the court, as such, carries no weight or authority with it. We have eight courts sitting as courts of review, presenting the spectacle of conflicting decisions. Considered as distinct tribunals they have little or no effect in settling the law, and nothing is regarded as settling it but a decision of the court of appeals. Under the former system the supreme court was considered a court of greater weight and authority in the State, and especially out of the State, than the court of errors, though above it. I regret that my friend, Professor Dwight, is not present to confirm the statement he made in the committee, that the students of our law schools from other States do not purchase Barbour's reports, in which the decisions of our supreme court are reported, declaring that they are of no use, as the judges of their States attach so little weight to them. The committee have reduced the eight branches of the supreme court to four. In the Convention of

1846, some were in favor of one supreme court with an increased number of judges; but after a very full discussion, the district system prevailed, and the committee became satisfied, from their inquiries, that the people prefer separate tribunals in different parts of the State, and they have adhered to it, reducing the number one-half, that there may be less conflict of decisions, and that the court, being composed of a larger number of judges, may have more weight and authority. But there was another reason. The committee were satisfied that it was the prevailing sentiment of the State, that no judge should sit in review of his own decision. The committee were themselves on this point unanimous, and they adopted a clause to that effect. This could not be carried out by adhering to the former system of eight districts, and could be accomplished only by creating departments, in which there could always be more than three judges to sit in general term. I come now, Mr. Chairman, to the only remaining question which I propose, at least for the present, to consider; that is, the change made by the Convention of 1846, by which the tenure of the judicial office during good behavior, until the age of sixty years was altered to an election of the judges for short periods. It might be supposed that so important a change as this was made upon mature deliberation, and after the fullest examination. What was the fact? Why, sir, all that was said upon this subject during the debate upon the judiciary system, which extended to nearly five weeks, and covers two hundred and forty printed pages, is embraced in the space of two pages. The fact is the subject was scarcely considered. The change was made in conformity with the theory advanced, that the judges ought to be elected by the people, and for short terms, to which nearly every one seemed to assent without inquiry, and almost without debate. At least the views expressed by those who doubted its policy are, in the reported debates, confined within the narrow limits I have stated. It is a wise rule not to change a provision once incorporated into the fundamental law of a State until experiment has shown it to be defective and indicated the nature of the change that should be made; but this change was made purely upon a political theory, without any thing having occurred in our past experience to indicate that it was called for by any public necessity. There was no pretense that any evils had arisen or any inconvenience from the judges holding their offices for good behavior, until they reached sixty years. On the contrary, it was admitted by Mr. Brown, who was said to have participated in drafting the plan that was acted upon, that the average period for which the judges had held office, from 1821 to 1846, was between seven and eight years, and upon investigation, I have found this to be the fact, and I may also add that the average period in Great Britain, in the supreme court of the United States and in Massachusetts, I have found upon inquiry, to be fifteen years. But, Mr. Chairman, there are times when the human mind becomes restless with respect to things permanent. Periods when provisions are abrogated without any inquiry as to the reasons which led to their institution, and with little or

no consideration of the consequences which may follow, and this was one of these periods. The fundamental principle that an independent judiciary is the greatest safeguard that was ever devised under a government of laws, for securing the rights of all classes; for protecting the weak against the strong, the poor against the rich, and for having the laws faithfully, impartially and vigorously administered, and that the way to secure it is to have judges who hold their offices during good behavior, was thrust aside without any inquiry as the historical reason which had led, after a long struggle, to the adoption of this great principle in England, and afterward in the colony of New York, and as these historical reasons were not known, or if known, were not referred to by the advocates of this change in the Convention of 1846, I will take the liberty of stating them. In the history of English liberty there are four great landmarks: *Magna Charta*, the writ of *habeas corpus*, the *Bill of Rights* and the *Act of Settlement*, by which the memorable revolution of 1688 was consummated. The last and not the least important of these, the great Act of Settlement, by which the Hanoverian and Protestant succession to the crown was permanently established, contains nine provisions, the seventh of which is that the judges thereafter shall hold their office during good behavior, with established salaries, and shall be removable only upon the address of both houses of parliament. Why this provision was deemed so important as to be made a fundamental and irrevocable part of the British Constitution, by the act of settlement, will appear from a brief exposition of the causes which led to it. Before the time of James I there was no positive provision, either by common law or by statute, fixing the tenure of the judicial office, but the practice had been to insert the tenure in the judge's commission, and the usual custom was to fix it during good behavior. When James I began that despotic course, the continuance in which brought his son Charles I to the block, one of his earliest measures was to make the judiciary entirely dependent upon the crown, to effect which he inserted in the judges' commissions the clause that they should hold their offices during the pleasure of the king, and except for a short time toward the close of the reign of Charles I, and at the beginning of the reign of Charles II, this continued to be the rule until the revolution of 1688. This period of the dependence of the judges upon the power that created them, embraces something less than a century, and it is the darkest, the most disgraceful, and the most venal period in English judicial history. It began with an event characteristic of such a system. The twelve judges were summoned into the presence of the king and asked if they would stay proceedings when the question of the king's prerogative was raised in court, until his will was known. Eleven fell upon their knees and declared that they would. Coke, the chief justice, alone stood erect and returned the memorable answer, "That when the case happened he should do that which should be fit for a judge to do," and three weeks afterward he was dismissed from his office of chief justice. This was the

period of the Titus Oates prosecutions and of such chief justices as the infamous Scroggs, and the still more infamous Jeffries. It is marked in English judicial annals as a period of the most shameful judicial corruption, for although there was an occasional instance of an upright judge, like one whose honored name is borne by the gentleman who sits before me, Sir Matthew Hale, the great body of the judges during that period were noted for the basest servility to the power from which they received their appointment, and upon which they depended for their continuance in office. In the decision of causes between individuals the bribery and corruption of the judges was notorious. Even so great a man as Bacon was fined £40,000 for taking bribes in his office of chancellor. I waive discussing the question raised by his recent biographers whether what Bacon admitted that he did amounted to venality or not, reserving to myself the opinion that what he did was what no upright judge should have done. Chief Justice Jeffries exacted £18,000 or \$90,000 for his decision in a single case; but without multiplying instances, which to the disgrace of the period are numerous enough, it is sufficient to say that so notorious was the corruption of the judges, that, to use the language of a contemporary member of parliament "every man felt their hand." All the judges except Croke, the author of the reports, decided in favor of the king in the ship money case, and he at first resolved to give way, knowing that it would involve the loss of his place and the ruin of his family, but was induced to decide as he did at the earnest entreaty of his wife. In the political struggle which followed between the parliament and the crown, the crown exacted a compliance with its will under the penalty of a dismissal from their offices, while the parliament held them to a compliance with its wishes under the penalty of diminishing their salaries or of refusing to pay them. This led to the most disgraceful exhibition on the part of the judges in the impossible attempt to please both parties, but in the final struggle the power that held the purse prevailed, and consequently during the short reign of James II, of four years, ten judges were dismissed from office. When, after the revolution of 1688, William III came upon the throne, so wide spread, so general and universal was the public feeling in respect to the corruption of the judiciary, that one of the first measures was the passage of an act of parliament declaring that the judges should thereafter hold their offices during good behavior. But William was a monarch and unwilling to diminish the prerogatives of the crown. He refused to sign the act, but the pressure of public sentiment was so great that he consented that the judges who were then to be appointed—for all the existing judges were removed—should be appointed to hold their offices during life, and when the act of settlement became necessary, twelve years after, a provision to that effect was inserted in it as a fundamental principle of the British Constitution. One hundred and sixty-six years have elapsed since that event, and with the exception of the charge against the Earl of Macclesfield, in 1725, of receiving money from persons whom he appointed masters in chancery, and of a recent

charge against Lord Westbury, of the same general nature no charge of judicial corruption has ever been brought against any British judge. But since this change was made they have all, in the language of Lord Campbell, been men of character, most of whom have adorned the seat of justice by their talents, their acquirements and their virtues. The evils which had arisen in England from having the judges dependent upon the power that created them, had been also felt in the colony of New York. The popular party in the colony in 1751 insisted, as a right, that the provision in the act of settlement, by which the independence of the judiciary was secured should be applied here, that the judges of the colony should not hold their offices during the pleasure of the Governor or of the crown, but for life, on the tenure of good behavior, and Admiral Clinton, who was then Governor, complied with the popular request in the appointment of Judges Chambers and Horsmanden. On the death of George II the commissions of the judges of the colony expired, and Governor Colden refused to renew the commissions upon the tenure of good behavior, alleging, that his instructions were that they should hold their offices during the pleasure of the crown, but the judges refused to receive them upon that condition, in which they were sustained by the popular party, and the administration of justice was for the time being suspended. A question having arisen at the same time in England, as to the effect of the death of the king upon the tenure of the judicial office, an exposition was given in the speech from the throne, in March, 1761, of the reasons of the rule for the life tenure of the judges, in which it was declared that it had been enacted, "Because the uprightness of the judges was looked upon as essential to the impartial administration of justice, as one of the best securities of the rights and liberties of the people." When the king's speech reached the Colony of New York it was hailed by the popular party as a confirmation of their rights, and in the following May an act was passed by the Colonial Legislature, providing that the judges should hold their commissions during good behavior. This act Governor Colden refused to sign, alleging it to be unconstitutional, and contrary to his instructions. The judges the Legislature, and the popular party insisted that it affirmed a right guaranteed by the act of settlement. The Governor refusing to yield, the dispute was referred to the Lords of Trade and Plantations in England. The home government, which with that characteristic inconsistency with which they treated the claims of the Colonists to the rights of Englishmen, returned an answer to the effect that the reasons which had led to the incorporation of this provision in the act of settlement did not apply in the case of the Colonies. Upon this the judges yielded, but the Legislature and the popular party, the whigs of that day, did not. The agitation was kept up, and in the session of 1763 a memorial to the king, upon this subject, was passed by the General Assembly, earnestly soliciting that the judges might be appointed to hold their offices upon the tenure of good behavior, for life, in accordance with the act of settlement, and in

consonance with the speech from the throne. The close of the memorial is one of those simple and eloquent appeals so characteristic of the period. "Confirmed by the example given in England upon the occasion of King William III., encouraged by your majesty's late most generous and gracious declaration to your parliament from the throne that the independence and uprightness of the judges is essential to the administration of justice; one of the best securities of the rights and liberties of the subjects, and most conducive to the honor of the crown, we beseech your majesty that your faithful Colony of New York may be heard before your majesty by their agent and counsel, supplicating with the most respectful humility for such an instruction as may enable your majesty's representatives to assent to a law equally salutary to your undoubted rights and the inestimable properties, privileges and liberties of your people." Nothing came of this memorial, but the matter was again renewed and agitated in 1765, in connection with the stamp act, and became the subject of a pamphlet which led to a legislative inquiry, so that one among principal grievances which brought about the American revolution, so far, at least, as the Colony of New York was concerned, was, in the language of the time, the inestimable privilege of an independent judiciary. The principle to be extracted from this historical experience is, that the judges should hold their offices during good behavior, so that the power which selects them, whether it be a king or a political party, or its managers, may have no improper influence over them while they are fulfilling the important functions of interpreting the law, and of meting out justice between man and man. That historical experience has also shown that when on the bench it should not be even in the power of the Legislature to control or influence them by withholding or diminishing their salaries. Our government, like that of England, is composed of three parts, the executive, the legislative and the judicial, each of which has its own appropriate sphere, and each of which should, as far as possible, in the exercise of the functions which belong to it, be independent and beyond the control of the other. It is in this that the security of the individual citizen lies. Upon its preservation depends the practicability and perpetuity of republican government, for if we once lose sight of it, we shall but oscillate between despotism and anarchy, until we pass into the one or the other. To be independent, therefore, of all improper influences, the judges should hold their offices during good behavior, until they have reached that period, when, by the natural decay of the faculties, they are no longer able to discharge their duties efficiently. The communes have fixed that period at seventy years, and that that period is not too long is abundantly shown in the history of our own and of the British judiciary. Lord Kames, distinguished equally for his literary and for his legal abilities, was an able and vigorous judge at the age of eighty-five. Lord Mansfield sat with undiminished powers at the age of eighty-two. Lord Chancellor Lyndhurst made one of his greatest speeches, and one of the most effective ever heard in the House of Lords, when he was eighty-one. Chief Justice Marshall pre-

sided in the Supreme Court of the United States, with his intellectual faculties unimpaired, at the age of seventy-nine. Chief Justice Shaw, of Massachusetts, wrote his opinion in the case of the *Commonwealth v. Temple*, one of the most graceful, original and vigorous he ever delivered, in his eightieth year. Chancellor Kent wrote his Commentaries when, by the Constitution of this State, he was no longer intellectually competent to be a judge; and he continued to revise and edit them with his characteristic ability, until he was past eighty; and Chief Justice Taney sat upon the bench of the Supreme Court of the United States with no perceptible decay of his intellectual faculties, until the age of eighty-six. During the seventy years that the judges of this State held their offices upon the tenure of good behavior, we had a judiciary that would compare with that of any age or of any country. Such a thing as the suspicion that a decision was rendered from corrupt or other improper motives, was never heard of. Before 1821, some of the judges were strong political partisans, and were complained of for their course in the council of revision; but political reasons or motives had no influence upon their decisions in the courts of justice, for they were not dependent upon any political party for their continuance in office. Holding by the tenure of good behavior, they were independent of all parties, and beyond the reach of any such influence. From 1821 to 1846, they were beyond even the charge of political partisanship. They neither mixed in nor took any prominent public part in the strife of parties while they sat upon the bench. In short, during the tenure of good behavior, the judiciary of the State of New York, in the character of its judges, and in the weight attached to their decisions, held a rank among the very first, if it was not the first, in the Union. We changed that system, not for any assigned cause, but purely upon a political theory, and for twenty years have had judges elected for short terms. What has been the result? A judge elected for a short term is compelled, upon going upon the bench to give up his business; and being thus left dependent upon his office for support, his attention is at once fixed upon the necessity of a continuance in office, for the salary is and has ever been so small that he can save nothing from it, as it is expended every year in the support of himself and of his family. He soon learns that his continuance in office does not depend upon his learning, his ability or his integrity; that it depends, first, upon the continuance in power of the political party that elected him to which he belongs; and, secondly, upon his ability to secure a re-nomination at the end of his short judicial term. He may have the learning of Mansfield and the integrity of Hale, but it will avail him little if his party is not in power, and if he is not an active, leading and influential member of it. My late colleague, Judge Woodruff, in learning, ability and integrity, would compare with any judge that we have had upon the bench in this State. He was a republican, and when his term was at an end, he could not be, and he was not, re-elected. Chief Justice Bosworth adorned the bench of the superior court, and gave to Ameri-

can jurisprudence the valuable series of reports which bear his name. He was a democrat, and his party was in power, but he did not secure the necessary nomination and was not re-elected. But I do not propose to consider this question further. I have already occupied a great deal of the time of the Convention. It is not, in my judgment, very material how the judge is chosen, whether by election or appointment. Under either mode there will be sufficient care exercised in his selection, if he is to hold the office until he is seventy. The real evil at present is that, after he goes upon the bench, he depends for his continuance there upon the action and upon all the influences which affect political parties. The thing most deeply impressed upon my own mind during the many years that I have sat upon the bench is, that a judge should never be permitted to think of his re-election and of the means necessary to secure it. And, in conclusion, I submit whether a return to the former system of a life tenure by which the judge, after he goes upon the bench, is removed from all further dependence upon, or necessary participation in, politics, is not more suitable to the judicial character and better adapted to secure the faithful and impartial administration of justice.

Mr. GRAVES—I desire to ask the gentleman two questions, if he will permit me, before he sits down.

Mr. DALY—I will hear the gentleman's questions.

Mr. GRAVES—The first is, have you any knowledge that any judge, since 1846, has been bribed? The next is—

Mr. DALY—I will answer your first question before you ask the second, as the answer may dispense with the necessity of the second.

Mr. GRAVES—Very well, sir.

Mr. DALY—I had desired to avoid any reference to the subject-matter of this question. I am myself a judge upon the bench, and it was my wish, as one of the existing judges, to avoid speaking upon such a topic or of entering in any manner into such inquiry, considering it a subject more appropriate for the consideration of other gentlemen of the Convention than one belonging to the class who may be regarded as attained by the very fact that such an inquiry should be seriously made respecting them. But the gentleman desires to know what I have to say, and I will answer his inquiry by referring him to a humiliating fact from which, as an answer to his question, he may derive whatever comfort and satisfaction he can; which is that in the last or in the number before the last of the North American Review an elaborate article has appeared upon the judiciary of the State of New York, more particularly upon the judiciary of the city of New York containing a detailed statement of corrupt acts and of conduct upon the bench, which is quite equal to any thing to be found in the dark and disgraceful period of English judicial history, to which I have referred. Whether true or not, it is humiliating enough to know that it has gone forth to be read throughout the United States and in other lands in the leading review of this country. That it has thereby become incorporated into the literature of the country and

that it may remain to be read by some future inquirer one hundred and seventy-seven years hence, seeking for information respecting our times, as I have looked up the contemporary statements respecting the English judiciary one hundred and seventy-seven years ago.

Mr. GRAVES—Are the facts contained in that article within your knowledge?

Mr. DALY—I trust in God they are not. [Laughter.] Does the gentleman mean to ask if I am one of the judges referred to? If he does, he will get his answer. I cannot suppose that he meant that, and I beg leave to say that I cannot see why I should be brought to the bar, by such interrogations and compelled to enter upon a subject which it has been my wish throughout to avoid. I beg leave to say, in respect to all such questions, that I am sufficiently humiliated by the fact that such an article has appeared in respect to a body of which I am a member. I am humiliated when one of the popular preachers of this country, Henry Ward Beecher, rises in his pulpit and makes the corruption of the judiciary of the city of New York the subject of one of his most stinging sermons, and refers to the whole body of the judiciary of the city as corrupt and rotten naming none and excepting none, but including all in one general judgment. This, I say, is sufficiently humiliating, and I put it to this Convention whether any thing of the kind was ever known under the system that prevailed before 1846, and whether the circumstance that our judges now are dependent upon political parties for their appointment to and for their continuance in office has any thing to do with the fact that such charges can be thus openly and publicly made. If there is any foundation for them; if the judiciary of the city of New York, or any of the members of it are corrupt, it is not or it will not be confined to that city. It will spread as every contagion spreads, for it will not be limited to any one spot or place. Men are the same whether they live in the city or in the country. They are influenced by the same motives and subject to the same temptations, wherever they are placed, and I beg leave to say in this connection that from what I have heard freely spoken and said, the imputation of judicial corruption is not confined to the city of New York, but has been applied to judges in other parts of the State.

Mr. GRAVES—I desire to ask the gentleman another question; whether the judicial history of our State shows that we have had any less worthy judges by the changes of political parties—in other words, whether the vacillations of political parties reduces the certainty of a wholesome administration of justice in this country.

Mr. DALY—The gentleman is quite as competent to answer that question himself as I can be.

Mr. COMSTOCK—I offer a substitute for the section.

The SECRETARY read the substitute as follows:

There shall be a court of appellate jurisdiction, called the court of appeals, composed of a chief judge and six associate judges, who shall be chosen by the electors of the State, and shall hold their

office for the term of fourteen years, and shall be ineligible for a second term. At the first election of judges under this Constitution every elector may vote for the chief, and only four of the associate judges. No chief judge or associate judge of said court shall remain in office longer than the first day of January next after he shall have reached the age of seventy years, and shall be ineligible for re-election.

The CHAIRMAN announced the question on the substitute offered by Mr. Comstock.

Mr. EVARTS—I feel somewhat indisposed to trouble the committee with any views upon this question at this time, following, as I shall, upon the same side which has been espoused and so ably presented by my friend, now on my left [Mr. Daly], and if it is proposed to support, in committee, the substitute as against the report of the majority of the Judiciary Committee, I would prefer, that before the close of the debate in behalf of that report, I might have the opportunity of listening to the views of gentlemen upon the other side; but if there is no gentleman present who proposes to address the committee in support of the principle of a fixed term of office, in opposition to a tenure of office during good behavior until the age of seventy years, I will proceed to address the committee.

The CHAIRMAN—The question is on the substitute offered by the gentleman from Onondaga [Mr. Comstock].

Mr. EVARTS—I regret exceedingly that it has been my misfortune, and now is my disadvantage, in this debate, to have been absent during the very full, very deliberate, very good-tempered, and, I might almost say, very complete discussion of this subject that has taken place during the last fortnight. Circumstances, which, however I may regret them, were yet entirely beyond my control, have kept me from attendance upon the sessions of this body. Now, Mr. Chairman, we may, at least, be willing to take this starting-point for the present discussion, as having been prepared for us by the previous debate, in which there has been a great concurrence, even of those holding, on the main issue, opposing opinions and views, upon some fundamental considerations which are to control this subject. The proposition of the committee of which I was a member, and in which I joined, is that the tenure of judicial office in this State, shall be established upon the principle of good behavior during, what may be expected to be, the period of judicial usefulness in respect to age and faculties. By fixing the age of seventy years as the period of judicial life, we avoid at once some difficulties which have been felt, and others which have been imagined, as resulting from the prolongation of the term of office beyond the continuance of the powers of mind and body necessary for the performance of its duties. Establishing that as the term of judicial life, we then give to the incumbent the security, and to the public the advantage of the continuance in office of a judge during that period. Mr. Chairman, I am ready to admit that the substitute proposed for the section reported by the Judiciary Committee presents, in as useful, in as sensible, in as acceptable a form as is possible, the counter proposition of a limited

erm. Its duration of fourteen years is adequate to meet the fair presumption and calculation of a good amount of judicial service, from a person who is competent when he is elected. The condition that the judge is to be ineligible is contained in the statement of the proposition as furnished to me by the clerk. If I understand my friend Judge Comstock, he has now proposed an amendment which introduces that feature; am I right or wrong?

The CHAIRMAN—The principle of ineligibility is contained equally in both the propositions which are before the committee.

Mr. EVARTS—But I observe in the copy of the proposition before the house, which the clerk has sent me, a provision "that no one shall hold the office of chief justice, or judge, longer than until the first day of January succeeding the time when he shall have arrived at the age of sixty years."

The CHAIRMAN—It should be seventy years.

Mr. EVARTS—Very well, I say then, that the substitute states as clearly, as usefully to the public service, as acceptably to those who with myself hold the opinion that the tenure during good behavior is the better tenure, this counter proposition of a limited term, as any form in which it can be put. The novelty, too, of giving one source of authority to the chief justice, to wit: appointment, and another to the junior justices, election, I have no particular objection to. The reasons offered in its support, and for the discrimination, in the sources of authority, do not strike me as very obvious, but I am satisfied to accept it as a modification, qualification, or compromise, if you choose so to call it, between the two sources of selection. I believe that the debate, as hitherto conducted, shows a remarkable unanimity of opinion as to what the public interests require from the judiciary, in its establishment and constitution. I believe that if in the Constitution of 1846 any contrary opinions or theories found expression, the experience of the State, as represented in the aggregate opinion of his commission for the revision of the Constitution, has shown that they were errors that had been exploded in the experience of other countries, in other times, and which were then again brought forward only to meet the condemnation which they have received in these twenty years of the life of this State and of the members of his Convention. These fundamental principles, of which I have spoken, are demanded, needful, indispensable, for the constitution of the judicial establishment in every community that professes to be governed by law and justice and not by power and caprice—for the judiciary is the representative of the JUSTICE of the State, and not of its POWER, in any form or under any representation. The judge is not to declare the will of the sovereignty, whether that sovereignty reside in a crowned king, in an aristocracy, or in the numbered and unnamed mass of the people. The judiciary is the representative of the justice of the State; and justice is of universal import, of universal necessity, under whatever form of government. Mr. Burke has wisely said justice is "the main policy of all human society." It is no more and no less the

policy of equal society and of free government, than it should be of any other form of government; and every form of government and every frame of society that does not maintain justice, in truth, in fact, for the whole community, in that respect fails of the main object of human society and receives its own condemnation in this, its failure to do justice. The next condition of judicial service in its true sense, for any people, is that the judges are to declare the law, and not impose it. They are not to represent the law-enacting power, they are not to take the place of the legislative power, whether that authority has its source in democratic choice or in the selection of a privileged class. It is the law of the land that they are to declare; not the will of any power in the land; and it is a declaration, and not an enactment of law, that is looked for from them. Now, can any one give any reason why, in a free government, in an equal condition of society, under the control of the ideas by which the people in this State and in this country are held together in their political and social ties, these considerations are less important, of less practical, pressing and constant value, than under any form of government or under any condition of society elsewhere, in which they have been valued and maintained, or in which they have been lost sight of, and suffering has followed from their desertion? I think not. Nor has the debate, in the discriminations it has presented, attempted to undervalue the importance of these principles or the necessity of their observance in the conduct of this Convention and of the people, acting upon our representation, in the establishment of their judiciary. This being so, what are the conditions to which we need to look when we come to devolve the discharge of this high duty, this representation, this declaration, this enforcement of the "right reason of the State," in the administration of the law of the land, upon judges to be taken from the community, and clothed with this great power? They will be men like ourselves. Although the sentiment of justice is implanted in the nature of man, as the best gift of God for the good government of the world, nevertheless the administration of justice is allotted to human means, to human agents. Our judges are to be taken from the community, and in choosing them there are two main considerations; first, how they shall best be selected, and second, how, having been thus well selected, they shall best be preserved, built up, fortified, ennobled, in their sentiments, in their character, in their repute and in their authority, before the eyes and in the opinions of the community, in the administration of whose justice they are to preside. Taking them as men, we are yet to endeavor to protect and fortify them as much as possible against the weakness of human nature, against its faults, against its follies. What is low in them, we are to endeavor "to raise and support;" what is strong in them, what is virtuous in them, what is noble in them, we are to cherish, defend and preserve. These are really the considerations upon which a wise people is to dwell in determining the judicial establishment that is most favorable for the maintenance and the practice of the judicial function. The nation from which we derive our origin, our laws, our custom

our habits, our language, has tried to put the judges, and we have, confessedly, tried to put the judges, upon a certain footing of superiority to the rest of the community. I do not mean in emoluments or titles, nor in personal distinctions at all; I mean in the constitution of the office and wholly for its sake. And the first great distinction of which, however familiar, we ought not to lose sight, because it is essential and fundamental, is that the judge is exempt from accountability for his judicial action. I mean personal accountability to members of the community who are affected by that action. His conduct and character are supervised, and he is corrected or removed, only upon a public prosecution. No action lies against him for any thing that he does in the judicial office. Every body else in the community is subject to be called upon to give redress for any injury that he inflicts upon any other member of the community, however high the station of the offender, or great his power. But the judge, by virtue of his office, is exempt from all accountability to his fellow men in their individual relations toward him for any thing that he does in the judicial office. The administration of justice comes finally to be a question of trust reposed in the judges, and the question, "*quis iudicat iudices?*" no community has ever been able to answer sensibly or usefully, otherwise than that God, the Judge of all, shall judge the judges at last, and that in the community where they administer justice, only the sovereign power, by the public procedure of impeachment shall correct their malfeasances in office. The next consideration—taught by the experience of the results of the contrary course, so wisely and so usefully explored and illustrated to us by Judge Daly—is, that the judge shall hold his office during the pleasure of no representative of power. *Durante bene placito* is exploded from our system. Now, nobody questions the truth, the practical value, of these principles, in their naked statement, or the usefulness of the experience that confirms them; yet, in the Constitution of 1846, they were both almost entirely ignored by the adoption of the plan of electing the judges for short terms of office. For, in the principle of short terms and recurring elections is included both the element of accountability for judicial action to all persons who have taken offense at judicial action, and the element of holding during pleasure. A judge is held accountable when election comes around for the judgments he has made in this or that case, in reference to this or that question, in regard to this or that interest. All the while, then, that he occupies the bench he has before his mind, pressed upon him, by the weakness, if you will, of human nature which is common to us all, that there is to be accountability, not to the public through impeachment, but to private resentment and private retaliation for all the misfortunes, all the faults, all the errors of his judicial course, at the mere will of the suitors and of their lawyers, who may have suffered wrong, as they think, by his judgments. So, too, from short terms and recurring elections, you have lurking in the system this most pernicious vice of holding during pleasure. What great difference would it have

made in the judicial office in England if the commissions from the crown had run "*to hold for eight years, renewable at the royal pleasure?*" Is not subservience to the royal pleasure for a renewal of the term but another form of dependence upon the royal favor for the continuance of the judicial term? True, it is eight years. But does eight years of the enjoyment of the dignity and emoluments of office make them less dear? True, the royal pleasure of removal or renewal is only to be exercised at fixed periods, but the royal memory of offenses in the judge will last as long as the judge's official term and pursue him with resentment at its close. In the working of our system we have found this to be the case. This our experience shows. To take but one instance. When Chief Justice Bosworth made certain decisions against a great political character, that great political character's memory lasted till the recurring election brought round the nomination in his own party. Chief Justice Bosworth was succeeded by Judge McCunn, because such was the royal pleasure of that political character. And this within the same political party, where partisan considerations were not involved. I do not exaggerate. I submit to the good sense of this committee that short terms and renewable judicial authority represents, under the form of an election, the intolerable vices both of accountability and retaliation for judicial action, and of holding during pleasure, because the office is renewable at pleasure. Mr. Chairman, this amendment itself recognizes both of these conditions, and seeks to avoid, and does, in terms, avoid, in great part, these faults and vices of short terms and renewable elections. Between the report of the Judiciary Committee and the substitute which is proposed in its place, there is entire concurrence in many particulars; that seventy years shall be the term of natural life within which judicial functions may be usefully exercised, and not beyond; that the judicial tenure shall be independent in this sense; that there shall be no accountability in any form, except by impeachment for judicial action; and that there should be no possible dread or no possible inducement laid upon the judge's mind in connection with the prolongation of his judicial tenure; that the pleasure of the community in the renewal of his term shall have no operation and effect, such as I have described to be consequent upon holding office during pleasure; in these points the two plans concur. We are really narrowed down, by the recognition of these great principles, this separation, this distinction between judicial office and political office being fairly recognized; we are really brought down, I say, to this great practical consideration and this alone: whether the tenure of the judges, for the period of their active life, or whether the fixed term, without the element of the uncertainty, of life, and without the opportunity for the prolongation of judicial service for the whole period of their active usefulness, will give us the best judges. Mr. Chairman, if there be any thing that is fundamental, and any thing that is worth preserving in our political system, it is the principle that public office is for the public service, and not for the private advantage and possession of the incumbent. I

believe that no people have ever departed more widely from this fundamental theory in the practices of their politics, than we have. I believe that the number of people who have been, and are in office, because it was and is convenient for them to be there, is greater in this country than under any other constitutional government in the world. I believe that the calculations and plans for according this or that place to this or that man turn more upon the reward and the advantage which it will be to him, rather than upon considerations of the public service, more openly and generally here than under any other government which professes to consult the interests of the people. I think I see unmistakable signs of the public will showing itself by insisting upon a change in the policy of conferring office in the future. We all agree then, that in filling the judicial office, of which I am now speaking, the whole question should be: which of these two methods, of a tenure during good behavior, taking the judge at any probable age in his natural life as the people shall see fit, will give us the best judges; first, in the original selection, and second, in preserving them in their proper character and proper conduct during their continuance in office. I confess that I have a very clear and a very thorough and very earnest conviction that the experience both of England and of this country, this country in the past, and this State in the past, shows that courts built upon the plan of a judicial tenure during good behavior, up to a period of age designated, gives the best judges. I believe in practical forecast there is no better guide than experience; and the experience of nations like our own, the experience of States like our own, the experience of our own nation, the experience of our own State, if we can recur to it, shows the best guides that we can follow. What is the main thing, supposing other things to be equal, in the demand of the public upon the services of a candidate for judicial office? He is to be taken, of course, from the bar; he is to have ability; he is to have learning; he is to have integrity; he is to have industry; he is to have a good character in the minor morals of life. He is to have every quality of mind and heart, and every advantage of health and strength that the best condition of the profession can present. And let me tell you that the statement of these qualifications describes a man who, in the legal profession has, in the estimate of the community, before him a career of the highest distinction and of most ample emolument. If the State is to claim the man with these qualifications, arrived in our profession at the age of forty or forty-five years (later than which in life I cannot think it for the public interest, as a rule, that we should seek for judges) if the State is to enter the ranks of our profession and take this man for the public service in the office of justice or for chief justice, it claims a man who, in the prospect of his life as it opens before him, holds "length of days in his right hand, and in his left hand riches and honor." And he will not take the station, however genuine his devotion to the public service, at the sacrifice of so large private interests. I do not mean interest in its most sordid sense, in the sense of the accumulation and the enjoyment of wealth, as

a personal gratification. I mean the sacrifice of progressive advance in position, in influence, in usefulness, and in the promotion of the prosperity and happiness of his family, of his children, of his grandchildren, objects which make up the impulsive motives of the whole mass of American society, that have produced the prodigious achievements of the past, and promise a still more magnificent future. Sir, I say that the State must make its best offer to a man of this intelligence, of this character, of this repute, and of these prospects. I do not mean that the State should offer him emoluments equal to what his profession will give; I do not mean that she should offer him the gratifications of political ambition, and the *ecclat* that public oratory in the forum and at the hustings give to the legal profession. These he must surrender. But she must offer him a career commensurate with the talents, and the character, and the duty that belong to him as a man. She shall not offer him a broken life; she shall not require him to exchange for the public service, for half of his life, a personal career which his talents assure him for his whole life. Now, what do you propose to such a man by your term of fourteen years (which is as long, I think, as a fixed term should be), with a condition against re-election, which, I insist, is necessary to preserve independence? You say to him, take this judicial office, for this fixed period, surrender your future in the sense in which I have presented it, and on leaving the judicial office look for something else to do, find new employments, or be content to "lag superfluous on the stage" of human action. This, the State, if it be wise, will never do. This, the State, if it be just, will never attempt. This, the State, if it be honest, will spurn in the treaty that it makes with its distinguished citizens for public service. Why, Mr. Chairman, what can you say to one who is to become a Chief Justice Parsons, or a Chief Justice Shaw, or a Chief Justice Spencer, or a Chancellor Kent, or a Chief Justice Marshall? What can you say to him if you choose to approach him? He is to have in the bar an honorable and useful career *for life*, with just attention to his own rights and those of his family, with just obligations to his country; with just obligations to his God. You offer him *half* a life of judicial service, in exchange for a whole life of professional duty and service to the community. For we lawyers, not less than judges, are sworn in our duty to subserve the interests of the State; and a good, and able lawyer, I think, may claim for the exercise of his profession the honor of advancing the glory of the State, protecting the interests of the community, and serving the public good. I say, then, that to begin with, you offer terms which the State has no right to expect will be accepted. What, then, are you to do? Will you postpone your proposition till he has reached an age when, at fifty-six, he can take your fourteen years' tenure and expect to serve out his full life of activity and usefulness? The question is for the public, as to the best age for the public service at which you are to take a lawyer and make a judge of him, consecrate him, sacrifice him, to some extent, for the public ser-

vice. Mr. Chairman, it does not make any answer to the principles upon which I insist, as governing human conduct, that experience shows the average of judicial life to be about fourteen years. The lawyer does not compute his life by the Northampton table, and has no honorable mode of ending it if nature should chance to prolong his days beyond their average. He calculates not to live out half his days, but the whole of them. He rejects the proposition, calculating in his own favor that his life is sure. One thing he knows is sure—that every dollar of his compensation being requisite to support him from day to day, so long as he remains on the bench, when he leaves it he must go back to the bar and establish new relations for the future support of himself and his family. Nor, by this condition against re-election do you fully meet the requirements of independence which I have insisted on, if the judge is dismissed from the bench in the fullness of life and activity. Although he cannot be re-elected as a judge, he will still propose to himself a future of either public or private advancement. He can be a Governor, he can be a Senator, he can hope, as a lawyer, to acquire a practice at the bar or to become a standing referee. You will bring him finally to the condition of the steward who has to lose his place, and must make friends to himself of the mammon of unrighteousness, that he may be received into men's houses when he leaves the public service. I do not, by these suggestions, make light of this subject. I am showing you that, by a less durable tenure than for good behavior, without any just compensation for what is sacrificed, you lose the great part of the essential ideas of commanding the best men and at the best age, for the public service. I am showing you that you thus lose all that makes up the difference between a judge standing above all embarrassments, and a judge who is left undefended by your institutions, against the operations of the ordinary influences that betray the frailty of our human nature. Mr. Chairman, there is one further consideration. I believe any one who supposes that the people of this State do not expect from this Convention a very thorough and substantial reinstallation of the judiciary, both in the tenure of the judges and in their repute with the people, is mistaken. Nothing will disappoint the people of this State so much as that we should adjourn, offering them a judicial arrangement which shows only circumstantial changes in the working system, without probing and correcting the real defects in the present judiciary, which cause such serious public concern. They wish to see the judiciary as it stood before them in the past, clothed with all the majesty of justice, and endowed with all the strength that it is in the power of men to place about those whom they desire to honor, and whom they are willing to intrust with final authority. This supremacy, this authority that I desire is not personal. It is all official. It is to help the judge's office, not to aggrandize the judge in his person, that I plead. It is to make the best and the most of what, after all, are the imperfect materials of our common nature with which we have to deal. I wish to see it impressed upon the mind of the bar, I wish the bar

to understand that the election of a judge to a seat on the bench is not only for the life of the judge, but it is for the lives of his cotemporaries at the bar. I wish them to feel that they are not to feel at liberty to plan for temporary occupancies of the bench, reserving for themselves the future chance when they become ripe for it. I wish them to know that for their lifetime, as well as for that of successive aspirants, this question is to be settled, and if they desire to be judges they must be candidates upon fair terms with the public, and at times when the office demands them. Let them know and feel, when they practice before that judge they have chosen, that they have, once for all, declined to be competitors in the public esteem for the place, and have preferred to fill out their own career at the bar. Let us have the reflex influence of an independent judiciary upon an independent bar. Let us work together. Let us magnify the judicial office for the public good. Let us be servants of the court as we are servants of the law, but only in that sense. Let us have no motives for drawing comparisons between the bench and the bar, preparing for future candidacy, for our own interests. Let us see to it that in the administration of justice private interests and by-ends and personal objects are excluded. Let us all know and understand, when a vacancy on the bench occurs, that it is a great matter who shall be judge. Let the power, Governor or the people, which fills the place, understand that it is for a durable tenure, and that a whole generation is to sit under the shade of that authority which is raised over them. If there be any influence that is worse than another is this constant shifting of authority, it is this feeling that it is of no great consequence at any time what is done by any body in regard to any office, because it is not to last for long, and there will be an opportunity to correct the error, if error it shall prove. This insidious argument against a durable tenure of office, that if you get a bad judge you cannot get rid of him, tends always to getting men not on the highest scale in the public service, because you can get rid of them, somebody else fitter than they all the while planning, perhaps, to take their place at some period suitable to his private affairs. I regret, Mr. Chairman, that thus, without premeditation and without preparation, I have been drawn into this debate on this subject, of all to which our attention has been given, the most interesting and important. But I most sincerely believe that although this proposed substitute for the section reported by the Judiciary Committee contains, as I freely concede, a great many elements of usefulness (really, as I think, conceding the principle that the tenure of the judiciary should be for good behavior up to the age of seventy years), yet it falls short of a practical, useful adaptation and application of the true principles of the judicial tenure. I implore, then, this committee to hesitate long before they deprive this plan of the Judiciary Committee of its true vital force. It is not enough, Mr. Chairman, that the judges should themselves have the character and maintain the conduct that we all agree is desirable. A great part of the usefulness of the

judiciary depends upon the repute in which it is held; and as has been well indicated by my friend, Judge Daly, in answering Judge Graves' questions, whenever one judge is open to animadversions of the kind that have been made with reference to some portion of our judiciary, in public estimation it degrades the whole bench.

Mr. SCHUMAKER—Does the gentleman refer to the article in the *North American Review*?

Mr. EVARTS—It has been referred to in the debate.

Mr. SCHUMAKER—Does the gentleman not know that one judge who is a member of this Convention is referred to in that article? That in speaking of the judges of the supreme court, the superior court and the marine court, this anonymous article refers to a judge sitting in this Convention?

Mr. EVARTS—I do not know that it does.

Mr. SCHUMAKER—Has the gentleman read the article?

Mr. EVARTS—I have.

Mr. SCHUMAKER—I say it does. It refers to one judge in this Convention.

Mr. EVARTS—I do not perceive how that affects my argument.

Mr. SCHUMAKER—The gentleman referred to one judge, or said one judge was referred to in the city of New York.

Mr. EVARTS—I did not mean any particular judge. I meant, numerically, one judge in the judicial corps. I have used no language, and desire to use none, making any reference to persons. I have no occasion to do so. It is never my habit and never my purpose. I speak, and the honorable member will give me credit for meaning what I say—I speak of one judge numerically, out of the mass of judges. My argument is simply this, that, as the future usefulness of the judiciary resting upon two considerations, first, the fitness and character and conduct of the incumbents themselves; secondly, the reputation in which they are held by the community, that the infection of the bench, by the presence of one unworthy member, operates to the depreciation in public esteem, of the whole bench. Probably the gentleman will agree with me in that respect, as a naked proposition, which is all that I intended. Now, why is it that whatever we may think—and I shall have a word to say on the subject—of the character and conduct of the judiciary of this State, under the present system—why is it that we must all agree that in the readiness of the public to credit aspersions against them, in their moral power with the public, in the arena of public opinion, there has been so great a falling off in the position of the bench? Simply because the public, the thinking public, those who make up public opinion, exercise their own judgment upon the subject, and they really condemn the system of recurring elections and popular choice. They say that judges whose re-election is a recurring subject of interest with them, and with the community, cannot be so independent as judges holding by a better tenure. When particular facts, particular instances are insisted upon in public accusation, the community is ready to generalize their condemnation without proof and without inquiry. The system is denied that pub-

lic confidence which, in an intelligent and instructed people like our own, is the breath of the life of every institution. And now let me say, in conclusion, what I am glad to have an opportunity of saying in public, that the habitual respect for the judiciary, which I have always held, and I believe have always manifested, in the presence of all courts and out of it, has made me feel that we, the people at large, were accountable, more than the judges could possibly be accused of being, for the falling off of judicial credit and influence. It is we, the people, that hesitate to clothe our judges with the ordinary conditions and guarantees, in men's esteem, of their independence. I believe they exhibit a high degree of independence. I put a high estimate on their ability. I know them to be laborious, and they perform their public duties in a manner most highly creditable to them personally. I wonder how they can do it. Their labors are immense; they are constant. Their emoluments are small. Their tenure is uncertain. We may be sure, then, that we have abundant materials for securing a judiciary up to the standard of the State's requirements and its ancient fame. We have the means of giving it that authority and influence, that favor and esteem in public opinion, that will maintain the judicial function at its old standard. We owe it to the judges, to ourselves, to the State, that we should do so, and we shall suffer if we do not.

The CHAIRMAN—The Chair desires to state the question. The Chair has examined the amendment proposed by Mr. Comstock and finds that it differs from the amendment now pending only in respect to the appointment of chief justice. That question having been twice passed upon by the committee, once upon a distinct division, and secondly upon a reconsideration, the amendment must be ruled to be out of order. The question is upon the amendment of Mr. A. J. Parker.

Mr. E. BROOKS—I would like to know if there has been a division of the question upon ineligibility.

The CHAIRMAN—There has been.

Mr. SCHUMAKER—I do not disagree generally with the report of the majority of the committee. I think that we are inclined to feel the evils that oppress us more than the evils that are passed. I know from experience, I know from the same general rumor which the gentleman who occupies a high judicial position in New York spoke of to-day, that there are faults to be found with our present judicial system. But, Mr. Chairman, I know from the same general information and history that there were faults with the system that has passed. I remember, in my early youth, hearing of partisan judges before 1846. I remember being brought up while a boy in a county under the old system before 1846, when it was known that the judge residing in the county was a fugitive, that he feared impeachment, and that he died away from his family and his home, in a foreign land, because he feared impeachment from his high position as justice of the supreme court. That is part of the history of the State of New York. It is part of its judicial history. The evidence in it will compare well with the darkest

judicial history that ever England experienced. I would refer to the name of the learned judge, but it is well known by every member of this Convention. It may not have been for a judicial act, but it was for conduct unbecoming a judge, that he was sought to be impeached, and he would have been removed from his high position had he not died in a foreign land. In relation to the article which appears in the *North American Review*—a vile, libelous article, a lampooning, anonymous, scurrilous article—there never was any weight given to that article until the gentleman from New York [Mr. Daly], by his dignity of character and his position as judge in the city of New York, gives it dignity of character here to-day. Why, it was looked upon as one of the the most monstrous libels, one of the most monstrous, venomous articles that ever emanated from any press in the country, not even excepting the press of Ned Buntline, the outlaw. It makes charges against almost every court in the city of New York and against every judge in the city of New York, unless it is the gentleman who has addressed us this morning. It states that Judges Bosworth and Woodruff contributed toward the political machinery of the city of New York; and it states that one of the judges of the superior court paid the sum of ten thousand dollars for his position upon the bench of the superior court of the city of New York. It harpoons the marine court, and sets forth that one of the judges of that court was corrupted, and that numerous judges of the superior court of New York were corrupted. And who is the author of the article? No one knows. It is charged to an English spy. It is charged to an English chance-man, a ticket-of-leave-man; and it is charged to a noted corruptionist who once hung around these halls as a sort of bottle holder to a false, weak-kneed democrat who sought to be appointed to the chair you now occupy. And neither of those men have the right to claim audience at any respectable tribunal in the whole country, and the only dignity that has been given to the article has been given by my friend from New York [Mr. Daly] to-day, by saying that it has become a part of the literature of the day. Great Heavens! So is Robinson Crusoe's travels; so are Ned Buntline's productions assailing Judge Daly in days gone by; so is Gulliver's travels; so all the nasty, yellow-covered trash imported from France, and the dime novels of our own country, are part of the literature of the day; but all worthless, and unfit to be read. So it is with the article which the gentleman refers to—it is unfit to be read by any fair minded man: scurrilous, and without an author.

Mr. COMSTOCK—I was sorry to hear the announcement of the Chair, that the substitute offered by me was not strictly in order. I was not present at the discussion, but from the reading of the debates I know that when the committee of the whole adopted the proposition that the chief judge of the court should be appointed by the Governor and the Senate, the alternative before the Committee was, the designation of the chief judge by the body of the judges. That was the only question then before the Committee of the Whole. The substitute offered by myself

proposes that every elector in the State may vote for a chief judge and four of the associate judges. If the proposition be not strictly in order in that form, I would like to ask the unanimous consent of the Committee of the Whole that it may be considered in that light and passed upon.

The CHAIRMAN—The amendment proposed by the gentleman from Onondaga will be received and considered if there be no objection.

No objection was offered.

Mr. SMITH—I rise for the purpose of asking a question or two, which I would like to hear answered by those who advocate the majority report; and I ask for the purpose of information, that we may better understand the subject under consideration. First, is there not an incongruity between popular elections and the life tenure? Second, if there are evils in a partisan nomination and popular election, are they not stereotyped and made remediless by the life tenure? Third, if such a deplorable condition of things as is represented to exist in New York results from the elective system under the short-term tenure, what might not be expected under the life tenure? These questions have arisen in my mind as I have listened to the very able discussion this morning; and I would be glad to hear some answer to them from gentlemen representing the majority report.

Mr. DALY—I rise for the purpose of answering the questions suggested. I have already stated, Mr. Chairman, in the observations which I submitted, that in my judgment the great evil in the existing system which would be removed by the life tenure—which did not exist when the life tenure prevailed—is not the mode of selecting the judge, in the first instance, and placing him on the bench, but the influence exercised over him during his continuance in office, and having reference to his renomination and re-election. It will be remembered that, in stating the history of this subject in Great Britain, I showed that the evil which it was the object of the act of settlement to remove, was the power of the crown over the judge during his continuance in office; not the nomination of the judge to office by the crown, because he is appointed by the crown now. It is not, therefore, the power which selects, but it is the influence which is maintained over him during his continuance in office in which lie all the evils that have arisen. I will take the liberty of making an explanation, in reply to my friend from Kings [Mr. Schumaker], in reference to my general statement that no charge had ever been made against a judicial officer of this State, that he had been guilty of corruption in any decision which he had rendered. I beg leave to say, in reference to the circumstance to which the gentleman refers, that it does not conflict with my statement. I hesitate to mention the name of the judge to whom I presume he refers, although the name unfortunately has become a matter of history. It is sufficient to say that there was a charge against a judge of this State under the old system, one of the most accomplished, one of the most eminent, and in every sense one of the most distinguished on the bench. I do not know what the opinion of the gentleman from Kings [Mr. Schumaker] may be upon the subject, of the truth or falsehood of the

charge against him. My own mind has long been made up upon that subject. I have given it a careful examination, and have had to go over it recently in connection with a matter in which I am engaged, and I entertain no doubt whatever of the judge's innocence. But what I have specially to say in regard to that subject, is that that judge was never charged with having rendered any judicial decision for political purposes, or with being biased by any political influence in any decision which he rendered, or in which he participated. He was a member of the Council of Revision; and the charge against him was that he voted for the incorporation of a particular bank, in the council, for an alleged bribe, shared between himself and two other individuals.

Mr. SCHUMAKER—Three other individuals?

Mr. DALY—That is, then, the person to whom my friend refers. Now what I said in respect to the first question put by the gentleman behind me, is in some degree involved in the second. The gentleman asks whether the same evils would not arise in the selection of the judge by popular election, if the life tenure should exist. I have simply to say, in reply, that when you place a man upon the bench (I do not care what the mode may be by which he is selected—election or appointment), if I say you place him there upon the condition of good behavior, and if you have in full activity the provision which was established in England, and which we have continued in this State, of impeaching him for any misconduct in office, he will have little or no motive during his continuance in office to do any thing improper, and especially from political or partisan motives. He will have no motive out of fear of any political party to court the favor or to avoid the displeasure of any party or its managers, and if he does any thing from corrupt motives he is amenable to a tribunal which can inquire into his conduct and remove him. And I say, as my friend and colleague from New York [Mr. Evans] has said, that one of the very reasons why the power of impeachment has not been effective or resorted to, is the fact that the remedy is supposed to exist in the circumstance that the judge's tenure is short, and that the people can get rid of him by not re-electing him. If, instead of this, he stood upon the tenure of good behavior, amenable to a tribunal that would promptly remove him for misconduct in office, it would be a greater security, in my judgment, for the dignity and character of the judicial office, than the present system. The power which the judge is now made to feel and to appreciate is the power to be found in the political caucus. The power wielded by those who regulate the organization of parties, and who determine what candidates shall or shall not be put in nomination to be voted for. This is practically felt to be a power more potent than the power of impeachment, nor any other power under the system which is in force, and which does and must exercise an influence over the judges as long as they are engaged in the administration of their office. As I said before, I do not care what is the mode by which the selection is made, if you make the office dignified in its character, import-

ant in its influence. If you take a man from the body of the community and place him upon the bench for the remainder of his life, or until he reaches that period when the decay of his natural faculties no longer enable him fitly to discharge the duties of his station, you give the judicial office a character in popular estimation which it cannot have under the present system. You need not fear the selection by a political nomination under such circumstances. I believe the selection would be as carefully made and as well made as it would be by the Governor. The real evil is not so much the selection as it is the influence upon the judge when he is in office. In reference to his continuance in office, the fact that he stands there by a frail tenure, that his period is so short, and his continuance in the office so uncertain that he may possibly be tempted to think how he can best serve his pecuniary interests, and to think more of that, than upon the discharge of the duties of his office with that sanctity and purity which will give honor to his name during his life and send it down as a noble inheritance to his posterity. These are the answers, Mr. Chairman, in my judgment, to the two questions. I care not how the selection is made. I do not consider it inconsistent, for the reason that I believe the chief evil is in the fact that the judge, after he is on the bench, is a politician and must be a politician, if he would remain there; for if he is without political influence he will not remain when his term expires, but some one more active and influential will be nominated in his place. This is illustrated by the two instances I mentioned, and I mentioned them not to reflect upon any particular person, and I especially regret that I named one instance, simply because it might be supposed that I meant to reflect, which I certainly did not, upon his honorable successor. I refer to the case of Judge Woodruff, which I mentioned simply as an illustration of the fact that a very eminent man and a very distinguished judge could not be re-elected, simply for the reason that his political party was out of power. I mentioned the other as an instance where an eminent judge could not get a renomination. I was not speaking of individuals; I was speaking of the system. And with regard to the article in the *North American Review*, upon which the gentleman from Kings [Mr. Schumaker], commented, I have to say that I answered a question in respect to the fact of corruption which I would rather have avoided. I referred to that article as one in which no judge is named, which excepts some and refers to others, but who are the excepted and who are the transgressors, is not stated. The general reader may include me or any one of the judges for aught I know, in the letter, and our names be preserved in connection with a series of charges as grave as any that were made against the judges of the period I have referred to.

Mr. SCHUMAKER—I will say, in justice to the gentleman, that the court of common pleas is not mentioned in the article.

Mr. DALY—I beg leave to correct the gentleman. It is.

Mr. SCHUMAKER—I have just read the article.

Mr. DALY—I have not read it since last summer.

Mr. SCHUMAKER—The marine court, the superior court and the supreme court are all named.

Mr. DALY—I can only say that I do not like to go into particulars in regard to it. I simply stated from memory that the court of common pleas, or one of its judges, was mentioned in the article. I may be mistaken, and the gentleman from Kings [Mr. Schumaker] may be right. I have that impression, and therefore I made the remark that it might apply to me or to any one of the judges, as none are excepted by name. I certainly did not mean to refer to the article in any other sense, or for any other purpose, than to show the disgrace brought upon the judiciary and the judicial system of this State by the publication of such an article; and having sat myself for twenty-one years upon the bench, I might naturally feel a sense of shame and humiliation in reading an article containing such charges against the body, or the unnamed member of a body of which I was one. That is what I meant to say, and that is all I meant to say respecting it.

Mr. CHESEBRO called for a division of the question.

The CHAIRMAN—The Chair will state that the only question is as to the election of the chief justice upon the ticket with the four other judges. All the other questions have been passed upon by a separate division.

Mr. COMSTOCK—If this substitute shall be adopted I take it that it does not preclude further amendment with regard to tenure of office and non-eligibility.

The CHAIRMAN—No amendment that has not been already negatived by the committee.

The question was put on the adoption of the amendment offered by Mr. Comstock, and it was declared carried.

Mr. HALE—I now move to strike out "for fourteen years, and shall be ineligible for a second term," and to insert "during good behavior, or until they reach the age of seventy years." There never has been any vote in this committee on the question of tenure, as between the tenure of fourteen years and the one proposed by the Judiciary Committee. I offer this amendment with a view of getting the sense of the committee on this question. I do not desire to add any thing to what has been said on the subject, but merely to ascertain the feeling of the committee on that point.

Mr. WAKEMAN—As I may vote somewhat differently from what I have before, I wish briefly to state the reasons for the vote I shall give. I was opposed at first to the life tenure, as it is called. I was in favor of the re-eligibility of the judge. I held that a judge who had performed his duty well for a period of years, should be eligible for re-election, and that the people would have a right to demand his re-election. I have, therefore, voted substantially heretofore against what is called the life tenure. I was not particularly in favor of the fourteen years tenure; I was not particularly in favor of the proposition to make the judge ineligible; and I voted against that proposition. I am here for the purpose of getting all the light I can, and giving the most

intelligent vote I can on the whole subject, after I shall hear what gentlemen have to say. I was in favor of the appointment of the chief justice by the Governor, for the reason that I believed that the Governor could look over the entire State, and on the whole could select the chief justice, in view of his position, perhaps better than a political Convention. But my reason for that was not so much as to the mode of the appointment or the election, as it was that we might have a chief justice known as such in this State. The remarks I made on this point will be recollected by some of the members. I thought then, and I believe now, that this great State should have an officer known as the chief justice of the State of New York. Therefore, whether appointed by the Governor or elected by the people in pursuance of the amendment offered by the gentleman from Onondaga [Mr. Comstock], I care not. The fact seems now to be settled, and conceded on all sides, I believe, that the chief justice shall be a chief justice, and shall be known as such; that he shall not be liable to be changed every two years, as the amendment was at first adopted. As between the life tenure and fourteen years, which is the subject of the pending amendment, I have listened with great profit, I believe, to the debate this morning. I have listened with great pleasure, and I hope instruction, to the two gentlemen from New York who have addressed the committee on this subject [Messrs. Daly and Evarts], and I must say that, as between the life tenure and fourteen years, I hesitate as to what my duty is upon that point. I can see very readily that, if we elect a bad man for fourteen years, that is a calamity. I think that, perhaps, if we get a bad man for fourteen years the few remaining years that he will have to serve will not inflict much greater injury upon the community; at all events, we have the right to impeach a bad judge for misconduct, and get rid of him. That brings us to the question whether it is not better to adopt a system that will put an end to all controversy with reference to this, and to adopt the life tenure. I can see most readily that if we take a man in middle life and make him a judge of the court of appeals for the period of fourteen years, he may have ten years longer to serve when he could serve the public more usefully than he could in any of the previous years of his life. To say that such a man should be compelled to go back into the profession, is to place him in rather a humiliating position for a man who has been a judge of the court of appeals; because it cannot be denied that when a judge goes upon the bench of the court of appeals or any other bench and remains there for a term of years, he is substantially unfitted to go back into every day practice; or if he should be fitted for it, his practice is gone; and the result is perhaps that in his declining years he may lack the necessities of life that he would not if he had continued in his profession. Again, sir, when a judge has a full knowledge that he cannot be re-elected as judge, he may look around to see whether there is not some other political position by which he may obtain a livelihood, and this fact would be as likely to operate upon his mind while upon the bench, as the chance of re-election. On

the whole, in view of the past history of this country, I am inclined to believe now that it will be better to terminate the official existence of the judge at seventy years, and adopt the principle of the Judiciary Committee, than to limit the period to fourteen years. Therefore, on the whole, from the light I have at present on the subject, I think I shall vote for the amendment of the gentleman from Essex [Mr. Hale]. I have no pride of opinion on this subject, except this, that I wish to give the most intelligent vote I can for the benefit of the whole State. And I wish to do the best thing I can for a judiciary that shall be respected, not only in New York, but throughout the length and breadth of our land. I shall therefore vote for the amendment, believing, as I do, that I have learned something from what I have heard here from men of experience and ability, and being willing to acknowledge it here.

Mr. COMSTOCK—I feel bound to say one word on the amendment of the gentleman from Essex [Mr. Hale], in justice to myself and to opinions I have long entertained. I have always entertained a conviction in favor of a permanent tenure of the judges. I maintained that opinion with earnestness in committee, and it is unchanged now. On the contrary it has been merely strengthened by the able and the eloquent arguments to which I have listened this morning. I therefore shall vote for the amendment of the gentleman from Essex [Mr. Hale]. My own substitute, which includes the limited term of fourteen years, was offered for another purpose. I have made these observations to clear myself from the imputation that I am in favor of any other than a permanent term in the judicial office.

Mr. SMITH—I would like to inquire before the vote is taken, of gentlemen representing different parts of the State, whether they believe that the people are prepared to adopt the life tenure. Assuming for the moment that it is the best plan, yielding to the force of the very able arguments that have been made this morning in favor of the life tenure, would the people of the State generally be willing to adopt it? We should aim not only to make a good Constitution, but one that the people will adopt. I am satisfied that there is a feeling in the minds of the community that there is an incongruity between popular elections and the life tenure. There are many who would be willing to adopt the life tenure if judges were appointed, but they think that an elective judiciary and the life tenure do not belong together. They desire the privilege of getting rid of a bad judge, if they should be so unfortunate as to elect such a man to office. They think that if there are any evils in popular elections, in partisan nominations for judges, they would become fixed and stereotyped in the elective system. For these reasons they are opposed to the life tenure with the system of popular elections. It is from the fear that the people would not accept a system of this kind that I am desirous that we should pause before we adopt it. If, however, gentlemen representing different parts of the State, and knowing the public sentiment on this subject, are of opinion that the people would accept the life tenure, I have certainly no

objections to it, for I feel the force of the argument in favor of it. But I hesitate to vote in favor of it with my present convictions in regard to public sentiment upon the subject.

Mr. EVARTS—The learned gentleman from Fulton [Mr. Smith] has put to us a distinct question of duty. He says, supposing that we admit that the best Constitution for the people of the State of New York in respect to the judiciary, should be one requiring a life tenure, but think that the people want a worse Constitution, what shall we do? Shall we make a good one or a bad one? That is a distinct proposition, that has shown itself in one or another form in various stages in our deliberations, and I propose to meet it now. In the first place, I would like to know who the people of the State of New York are, that are constantly referred to as not wishing this or that, or the other thing. The last expressions of the wishes of the people of the State of New York that I have heard in regard to the formation of a Constitution for the State, has been shown in the election of this Convention to discharge that duty. In their delegation of this great trust to us, did they authorize us to make what we regarded as a Constitution of the first merit, or of the second grade, on the ground that the people were of the second grade and we of the first? I do not understand that distinction. How is any duty to be performed in a representative government, if every delegate is to lose his own wisdom and character in the want of virtue and character of his constituents? What is the trust that is reposed in us? It is the trust of framing a Constitution such as we, upon our oaths, think best for the people of the State of New York, and our duty is performed if we have done that. And if the stern will displayed through the ballot-box overrules us, they will choose other delegates to perform the duty better. It will be seen that, if this Convention does not frame its clauses according to its conscience and its wisdom, it frames them according to an unrepresented conscience and wisdom that is not here. Who is to speak for that unrepresented conscience and wisdom? Who is to tell us what it is? Who is to tell us who they are? Is it the editors of newspapers that shall tell us what sort of a Constitution we shall make? It is the whisperings of men's own friends and acquaintances, that are to take the place of the accredited authority which through the ballot box has brought them here? When we carry on the fight are the front to be constantly falling back upon those behind, putting those behind to route by the falling back out of order of those in front? My proposition is this, that there are great and fundamental principles of a constitutional government, and no man has the right to say that the people have other wishes and other purposes than such as this Convention represents. I defy my learned friend to put his finger upon any class of men who have any authority to say in advance what sort of Constitution the people want, except this Convention, which is made up of their delegates chosen for that purpose and for nothing else. I shall vote, in the discharge of my duty, for making what I consider a good Constitution, but I do not pro-

pose to be guilty of the cowardice, when the people ask me "Have you discharged your duty of making a good Constitution?" which would compel me to say, "No. I could see through it, but I thought you would not." I insist that it is not consistent with the honor of the delegate or the honor of the people, and is not consistent with decorum for delegates to say here that it ought to be thus and so, but somebody at home, does not think so.

Mr. SMITH—I do not know that I understand the position of the gentleman from New York [Mr. Evarts], but if I do, he takes the ground that in the discharge of our duties here we are to be utterly blind to public opinion, and to the demands and wants of our constituents. If I am wrong the gentleman will correct me. I do not so understand our duty. If it were a question of strict morality, I grant you that we should have no right to depart a single iota from the line of rectitude. We should have no right to inquire what A, B, or C would think of our conduct. We should be bound by the moral rule—the "higher law." But when we come to a question of policy, it seems to me that a different rule obtains. When we come to frame laws, whether organic or administrative in their character, it seems to me that we have a right to inquire into the wants and wishes of the people. We are now framing a Constitution for the people, and if they will not adopt what we might regard as the best possible, we must give them the best they will adopt. We are discharging a trust. We are commissioned by the people to frame an organic law, and are not at liberty to disregard their wishes. Would it be wise in us to insist on certain notions and views of our own, and attempt to force them upon the people, with a certain knowledge that they would reject them? Is that wise statesmanship? Is there any inflexible rule of moral right that requires us, in the discharge of our duties, to take that position? If the gentleman will show me that the strict rules of morality require it, I will come up to the line upon every question that arises, and vote according to my own conception of what is the best. But when I am trying to frame an instrument for the government of the people, and for their adoption, it seems to me that I have a right—nay, that it is my duty to inquire what are their wishes.

Mr. POND—I have listened with a great deal of pleasure and, profit I trust, to the discussion this morning, upon the amendments that have been pending, and upon the one now pending and undetermined. For one, I am not disposed to admit that the elective system for the judiciary has been a failure, or that it is wrong in principle. On the contrary, I maintain that theoretically it is right, and that practically it has been demonstrated to be a success. In respect to whatever has been said in regard to the Convention of 1846, in the debate this morning or at any other time, tending to show that that Convention incorporated an error in the Constitution which it framed, by adopting the elective system, I beg to differ from the position thus taken. At the time of the Convention of 1846, what was the condition of the judiciary, and of the unfinished

business then before the courts? It was stated in the Convention of 1846, in the debate upon the system recommended at that time by the Judiciary Committee, that there were fifteen hundred cases undetermined, and then pending in the courts of this State, which called for a remedy. They had accumulated under a system to which it is now proposed to return, at least in part, and the naked proposition before us, substantially recommending the life tenure is one which was at that time superseded.

Mr. DALY—Will the gentleman allow me to say that the reason why those cases accumulated was that the judicial force was so small? There were but three judges; and although they might have been the best in the State, yet that was not a sufficient force to discharge the duties.

Mr. POND—It is a conceded fact, that at that time the judicial force in this State was unequal to the dispatch of the business then undetermined in the court of errors, the court of chancery, and in the supreme court. In the aggregate, as stated in that Convention by Mr. Brown, afterward Judge Brown, the number in arrears was about fifteen hundred cases. The Convention of 1846 undertook to create a judicial system that should not only perform the business that was to arise in future, but also to dispatch and perform the business that had previously accumulated. How far did they fail in that respect? It has been stated by the gentleman from Onondaga [Mr. Comstock] that there are only about a thousand cases now pending undetermined in the highest court of this State. This, if true, shows that not only has the court as then constituted been capable of doing the current business that has arisen since its organization, or that which is equivalent to it, but of reducing the amount of undetermined business from fifteen hundred cases to one thousand cases now pending. If this be a correct statement of the fact, can it truly be said that the judiciary system established by the Constitution of 1846 has been a failure? Since that period the population of this State, as has been stated by the gentleman from New York [Mr. Daly], has vastly increased; and I may add that, in my judgment, the difficulties under which we labor have arisen from such increase of population, and not from any inherent defect in the system then inaugurated.

Pending the remarks of Mr. Pond, the hour of two having arrived, the PRESIDENT resumed the chair, and the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock, and proceedings were resumed.

The PRESIDENT announced the appointment of the following additional members of the Committee on Revision:

Mr. VAN COTT, Mr. RATHBUN, Mr. COMSTOCK, Mr. E. BROOKS, and, to fill vacancy occasioned by the retirement of Mr. T. W. DWIGHT, Mr. CURTIS.

The Convention again resolved itself into Committee of the Whole, on the report of the Standing Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN announced the pending question to be on the amendment offered by Mr. Hale, Mr. Pond having the floor.

Mr. POND—Mr. Chairman, when the hour of adjournment arrived, I was suggesting that the evils under which our judicial system now labors were not inherent in the system of electing judges which the Convention of 1846 inaugurated, but were attributable in great measure to the large increase of population in this State, and the consequent augmentation of business arising therefrom, since that period. In 1845 the population of this State was 2,604,495. In 1865 it was 3,831,777—an increase of over a million of inhabitants; and the business of the State, commercial, agricultural, mercantile, as well as legal, has undoubtedly increased in even a greater ratio than has the population. Now, the defect in our system consists, in my judgment, in the want of adequate force to do the business, and not, as I said before, in the system of electing judges. To remedy this acknowledged defect, it has been suggested in the plan of the majority of the Committee on the Judiciary, that in the reorganization of the system we should reduce the number of judges. That seems to me a very curious method of improving a system, the great defect of which is, that it has already too little force for the work; but my friend from Cayuga [Mr. Rathbun] proposes to carry the principle still further, and he seems to think that if reducing the force one judge, as proposed by the committee, will increase its power to do business, reducing the number down to five will be much better still; on a principle similar to that, I suppose, enunciated by the Irishman, who, on being informed that if he bought a stove he would thereby save half his wood, thereupon remarked that if one would save half he would take two and thereby save the whole. [Laughter.] That seems to be about the conclusion to which my friend from Cayuga [Mr. Rathbun] has arrived in this matter; and I do not know why it is not a legitimate inference from the principles of reduction proposed by the Judiciary Committee. Eight judges, they say, are insufficient to do the business of the court of appeals; but substitute seven for eight and all the business will then be done. Now, if the business is more likely to be done by seven than by eight, why not more likely still to be done by five than by seven? I do not understand how this plan is to accomplish this magical effect, and I do not believe in its efficacy. Is it possible that seven of the judges now in the court of appeals can possibly do more business than the whole eight? I do not believe that by removing one of the judges now on the bench, you can have more arguments heard, more causes decided and more opinions written than you now have. I think the court of appeals will have to be remodeled on a different plan, and that instead of diminishing, we must increase the number of judges, to enable the court to do the business of the State. In addition to the augmentation of business, consequent upon the increase of population since the adoption of the Constitution of 1846, this Convention should provide for the prospective increase in the next twenty years, and perhaps for a longer period, of the

population, and the consequent increase of litigation in the State; an increase which will be necessarily in a far greater ratio in the future than it has been in the last twenty years. This State, sir, is an empire in itself. Its interests are vast and multifarious, and are continually on the increase. And I insist, therefore, that the plain and reasonable conclusion from our experience is, that an additional number of judges now is and hereafter will be required to perform the business of this State in the court of appeals. Nor should it be forgotten that the Convention has already adopted a section constituting a court of claims, whose duty it is to decide a class of cases heretofore decided by the canal appraisers, and it is also provided therein that an appeal to the court of appeals, from the judgments of that court, may be taken, thus providing for a still further increase of the business that will necessarily come before the court of appeals. Now, in view of the certain addition to the population and business of every kind in this State, and also of the increased business thrown, by this section in relation to canal claims, upon the court of appeals, as already suggested, I ask whether the proper remedy for our present difficulties is to be found in a diminution of the number of judges of that court? I think, Mr. Chairman, that rather than diminish the force now in that court we had better abolish the court altogether, and I do not think that would be so great an evil as those we are now enduring. Any one who will take the trouble to look over the record of cases decided by that court will find that nearly eight-tenths, if not a larger number, of the judgments that come before it for review, are *affirmed*, and therein will be found also a clear and conclusive argument to show that the supreme court of this State has not been deficient in character or ability. Of the remainder of the cases decided by the court of appeals, perhaps in half of them new trials are granted, and in nearly every one of these cases in which new trials are granted, if you follow them until they are finally determined, you will find that judgments are ultimately rendered in them for the same parties on the second trial, and they go up again to the court of appeals, to be there affirmed after great delay; so that the effect of having a court of appeals is simply to postpone the final judgments, in a large majority of cases, for years, while it is only in a very small proportion of cases indeed wherein the original judgments are ultimately reversed. I submit, therefore, as a question of public policy, that it might not be a very bad measure of relief to abolish the court of appeals entirely, and allow the business to be done by the supreme court as the court of last resort. But if we will not do this, then I insist that the only practical alternative is to create a court of appeals which will have what the present court has never yet had the force and ability to do—that is to say, the power to transact all the business which, under our laws, finds its way into that court. One plan proposed for securing greater dispatch in the business of this court, and the one proposed by my friend from Essex [Mr. Hale] in the pending amendment, is to make the tenure of office for the judges *during*

life, or, what is nearly equivalent to that, until they attain the age of seventy years. Now, that seems to me a very singular remedy for the difficulty suggested. I cannot conceive how a judge, elected for life or until he attains the age of seventy years, will be likely to be more diligent or to do more business than one elected for a shorter term and depending upon the favor of the people for re-election. It was argued in the Convention of 1846 in favor of this principle of short terms and eligibility to re-election, that it was holding out to the judges a motive for discharging the duties of their office honorably, diligently, fairly and faithfully; and against making judges ineligible, it was also urged that it would be making a distinction against the judges which was done to no other employee or servant of the people, nor of any private individual. It would be tantamount to saying to the judge that if he discharged his duties faithfully, he should never be employed again; whereas, in every other vocation in life, the prospect of further employment is held out as an inducement for the faithful and diligent performance of duty. At any rate, it seems to me, sir, that if the judges of the present court of appeals, and the judges of the supreme court who constitute a part of that court, are not stimulated by the shortness of their terms and the prospect of re-election, to diligence and industry, they will not be likely to be so stimulated by being placed upon the bench for life, or until they attain the age of seventy years, with the assurance that such a tenure must necessarily give to them, that whether they labor diligently and faithfully or not in the discharge of the duties of their office, the result is the same, they are not subject to removal for any delinquency in that respect. Instead of stimulating them to greater activity in discharging their duties the effect of such a tenure will, therefore be, in my judgment, to take away from them one of the chief motives for diligence and the main incentive to faithfulness that are now presented to them, and for that reason I am opposed to it. But aside from this consideration I am opposed to it, because I think that no class of men should be set apart from the great body of the people as officers holding their positions for life. It is contrary to our present system and to the prevailing practice in many other States, and it is contrary to the genius of our institutions. I do not agree with the gentleman from Kings [Mr. Van Cott], who seems to suppose it necessary when a man is selected to fill the office of judge, to separate him from his fellow-citizens and do all we can to make him feel that he is a different, an independent, and a superior being, until in time, he becomes a sort of embalmed mummy, entirely out of sympathy with the people. I do not believe in making any such class of officers in this country, and I trust we shall not embody in this Constitution any provision which would call them into existence. Gentlemen who have spoken on the other side of this question have also taken the singular position that when a man is once elected a judge, for a certain brief term, and is eligible for re-election, he feels at once that he must of necessity make only bad decisions, in order that he may be re-elected. This

view seems to me wholly to ignore both the reason and the facts in the case. A judge elected for a short term is necessarily put upon his good behavior before the people, and it is through good decisions alone, and not bad ones, that he can, as a general thing, hope to secure, or that he can secure, a re-election. That is the view presented in the Convention of 1846; and I submit whether our experience in the choice of judges for the court of appeals since that time does not clearly establish the soundness of that conclusion. Judge Ruggles, who made the majority report on this subject, in the Convention of 1846, is reported to have said in regard to the election of judges to the court of appeals:

"Whatever may be the objections against the election by the people of local judges, or judges whose duties may require them alone, and without associates, to decide controversies at the circuits between their friends and their opponents, the objection applies with little if any force to the election of part of the judges of the court of appeals. The judges of that court being eight in number, it will seldom happen that a majority of the court are acquainted with the parties. The majority of the court will always, from their position, number and connection with each other, be beyond the reach of these influences which, in the case of a single or local judge, may be regarded as unfavorable to the exercise of unbiased and impartial judgment."

Now, I submit that the argument thus presented is entirely sound, and that the experience of the past twenty years demonstrates its correctness. I ask any and every gentleman upon this floor, what judge of the court of appeals, elected under this system, has ever prostituted his high office by making a wrong, or, indeed, any decision for the purpose merely of securing a re-election? The gentleman from New York [Mr. Daly] alluded to some judges in that city who failed to be re-elected, although they were worthy of re-election, and to others who have been charged with corruption. Those cases may be as the gentleman states, but that has nothing to do with the question now before the committee. The question that we are considering relates to the choice of judges for the court of appeals, and not for the supreme court; and I submit that none of the judges of that court are obnoxious to the charge that, occupying seats in that high tribunal, they have prostituted their decisions with the view of securing their own re-election. In regard to the question of tenure, it is also urged that, if the judges are elected for short terms, and are not re-elected, they will be turned out of office, and having lost all their clients and business, will be left to drag out a miserable existence in writing books, or doing some other inferior kind of drudgery. Now, I ask, whether the condition of the judges of our courts who have failed to be re-elected, is so miserable as thus represented? Why, sir, so far as I know, all of them who have failed of a re-election are much better off, so far as their pecuniary condition is concerned, than they were while upon the bench. Take the instances that are to be found among the delegates upon this floor; have any of them suffered pecuniarily from leaving the bench? How is it with the two gentlemen who

represent the county of Albany in this Convention, Judges Harris and Parker? They do not appear certainly to be such used up and dependent individuals as have been described by the gentlemen who argue in favor of long terms; and I apprehend that the same is true with other judges who have left the bench. [Laughter.] Take, for instance, Judge Allen, from the fourth district; or take Judges Bosworth and Woodruff, of the first district, who have been alluded to. Is it not well known to every gentleman on this floor that they have each earned and received infinitely more money in the practice of their profession since their retirement, than they ever received while upon the bench, during the same length of time? Sir, I have no confidence in this theory that when a man is elected to any office under our government, he must thereupon be provided for during life. The theory is a bad one in any case, and it is entirely unnecessary to invoke it for the protection of our judges. Men having the capacity and the ability to occupy a seat upon the bench of the court of appeals or the supreme court are always able, if they fail to be re-elected, to successfully compete with other gentlemen off the bench in the practice of their profession; and their abilities and their power to accumulate property are almost sure to be quite as good, and are often better, than those who have never been judges. Why, sir, the fact that a man has occupied a seat upon the bench is a certificate of character and ability which enables him to secure the very best of legal practice after he retires from it. I therefore give no weight to that argument. My opinion is, that the judiciary of this State, chosen under the elective system, compares favorably with the judiciary of the State before that system was inaugurated. Another thing. The objection has been made that our law books, our reports of cases decided, have multiplied very fast under this system. Well, sir, is that really an objection? Is it strange that law books should multiply in proportion as books increased in every other department? Of course there are more newspapers published now than there were twenty years ago. There is more writing and printing of every kind, political, religious, scientific and legal. And is it really an objection that the decisions made by intelligent and learned judges are published? For one, sir, I differ from every gentleman who has spoken in condemnation of the increase of reports of decided cases. If I have a case to examine, I am very happy to find that another case involving a similar principle has been examined and decided by an intelligent court whether in one district or another; and one of the very last cases that I have been employed in as counsel before a referee, I succeeded in, by being able to find a reported case which had been decided by the gentleman from New York, Judge Daly, and which covered exactly the point involved in the case; and if that decision had not been published, in my judgment I should very likely have lost the case; so that if desired by the gentleman from New York [Mr. Daly] to vote in favor of lessening the number of reports published, I say that so far as regards the reports of cases decided in his court I shall object to restricting their num-

ber, at least while he occupies a seat on its bench.

Mr. HALE—Will the gentleman permit me to interrupt him?

Mr. POND—Yes, sir.

Mr. HALE—He speaks of his delight in finding a case involving the principles of some case which he has to present to the court. I wish to ask him how he feels when he finds such a case decided in one way by the general term in one district, and in precisely the opposite way by the general term in another district?

Mr. POND—When I find two such decisions as these described by the gentleman, I think I am in no worse condition than I would have been in if I had failed to find any thing upon the subject I was investigating. I am always glad to find the case examined by two able minds, and the views upon both sides of it clearly presented; and if any other legal gentleman in this Convention thinks that when he finds two conflicting decisions made by eminent judges of the supreme court, it disqualifies him from preparing a case for argument in the court of appeals as well as he could without them, I can only say that he is unlike me in that respect. In my professional investigations I prefer to follow where the path has been traveled before me by able judges, and even though I find that they differ in opinion on the question involved, I feel that I am at least as well qualified to conjecture what the law actually is, as if I had not had the benefit of their views in regard to it. I do not know but that my friend [Mr. Hale] would be better qualified to discuss and present a case to the court of appeals, without the aid of the views of any other mind than he would be with them. If any one would be so qualified I cheerfully admit he would be, but that is owing to the quick perception and great legal acumen of the gentleman. I think there are very few other gentlemen in the profession of whom the same would be true. But, Mr. Chairman, this question of the life tenure of judges is, in my judgment, only the same old question over again, the question of large Senate districts, the appointment of State officers by the Governor and Senate, etc., which we have debated so frequently on this floor. It is brought here in connection with pretty much every article that we have yet passed upon, and I suppose it will reappear in connection with every one that is to come. It has its origin in the distrust of the people. For my part, sir, I believe in a government "of the people, by the people, and for the people;" and I think that the great majority of our citizens hold the same political faith, and that our present system of electing judges has worked so well in practice as to make them unwilling to abandon it now. It is said that our judges are selected by caucuses and conventions of politicians. That is true. But, sir, they will be selected by caucuses and politicians if they are to be appointed by the Governor; and if they are appointed for life, and a bad judge is foisted upon the bench, the people must bear the infliction during his life, and he will be pretty sure to outlive the youngest member of the profession who sees him appointed, because it is emphatically true of bad judges, as Jefferson remarked that

"few die and none resign." [Laughter.] I am entirely opposed to the system that would put them there without the power of removal—for I regard the power of impeachment as substantially a nullity, judging particularly from the experience we have had and are now having of its inability to remove obnoxious individuals from office. [Laughter.] Now, the performance of the duties of the judicial function involves a great deal. A judge may perform the duties of his office in a manner not creditable to himself, and intolerable to the profession, and yet in a manner that will not justify his impeachment. He may be a tyrant and arrogant and oppressive. The position that I take is that there is no necessity in this country for putting any man or class of men in office under such a tenure. If the question were a new one, I might, perhaps, have some doubt in regard to it, but it is not. As I have already stated, our experience under the Constitution of 1846 has demonstrated that the elective system produces as good judges as you can secure by any other method. Did any method of selection ever give any people a better judge than Judge Denio? He was a democrat in politics, and his example, in one respect, tends to throw light upon the practical working of the elective system so far as regards the impartiality and uprightness of the judges chosen under it, and their indifference to political influences. While he was on the bench, the question of the constitutionality of the metropolitan police law came before the court of appeals. That was a question well calculated to test how far our judges, in deciding cases, are influenced by political considerations, with a view to securing their own re-election. If Judge Denio had been influenced by such considerations, he would probably have declared that law unconstitutional. Did he do it? Not at all. He disappointed many of his own political friends, if not the majority of them, and declared the law, as he understood it, to be constitutional. Did his decision in that case prevent his re-election? Not at all, sir. He was re-elected triumphantly. The gentleman from Onondaga, Judge Comstock, has declared himself in favor of the long tenure system, for the reasons which have been assigned here in support of it, and against the elective system. I ask every other gentleman on this floor, if, while the gentleman [Mr. Comstock] occupied a seat on the bench, these considerations, which are said to control and warp the minds and action of our judges, ever operated upon him? Not at all. And the same is true, I doubt not, of every other member of that court. I therefore repeat, that if a judge so chosen desires to be re-elected, the influence of that motive upon his mind will be to induce him to make good, honest, legal and just decisions, for the purpose of securing his re-election. I claim that the contrary position is unsound in theory and unsupported by experience. Therefore, Mr. Chairman, I am entirely opposed to this proposition of the gentleman from Essex [Mr. Hale], to insert this life tenure provision in the Constitution and hope it will not prevail; and as to the amendment of the gentleman from Onondaga [Mr. Comstock], I think it is inadequate to remedy the evil of which we complain. As I have

said before, the evil is not in the system, but in the wholly inadequate force provided to do the work. The force of the court should be increased, not diminished, and the proposition to reduce it instead of augmenting it, and to create this outside commission, as a sort of tender to it, I certainly cannot support. Without intending to go into the general question of the organization of our judicial system at this time, other than the court of appeals, I simply desired, after listening to the able arguments that have been made here in favor of the life tenure, to state my position upon that question and my opposition to it. The committee have already taken a vote upon substantially the same proposition and rejected it, and I hope they will now adhere to the position then taken, and insist upon the election of our judges for short terms, and in some form their eligibility for re-election.

MR. M. I. TOWNSEND—I am sorry (having spoken thoroughly as I have upon the judiciary) to detain the Convention with any further remarks upon that subject; but I feel that I owe it to myself, as occupying a seat upon this floor, to enter my protest against the proposition of the gentleman from Essex [Mr. Hale]. I am in favor of a republican government. I am in favor of the frequent elections of officers to hold positions of trust and confidence. I do not believe either in diminishing the number of persons elected as judges or in extending their terms of office. I am not disposed to undertake to move back the hand upon the dial. I do not believe that success will attend any attempt to carry back the shadow. Observation has taught us that it is entirely unsafe to intrust any man or set of men with a long lease of power, and that those selected for judicial positions are no exceptions to the rule. It is true, sir, that I base my views to a great degree upon my own observation. I would not reject the light of experience in others nor the light of history; but judging by the light I have received, either from history or from observation, or both, I do not hesitate to say that the elective system under which the judges of our court of last resort are now chosen, and are eligible for re-election at the end of their term of eight years, has given to this State as good a judiciary as the world has ever seen. I know, sir, how much I risk in making this assertion; I know at least from information, the eloquent addresses which have been made to this Convention to-day, telling us of what occurred in the olden time in our own country, and what occurred upon the other side of the water where judges are elevated above all ordinary influences, and hold their offices for life. I am sorry that I had not the privilege of hearing those addresses. I should have had that privilege but for the fact—and (I almost blush to tell it after what I have heard in this Convention, because after what we have heard here about the inefficiency and corruption of the supreme court of our State, a man ought almost to apologize for appearing before so low a tribunal) but I say I would have had the privilege of hearing these addresses, had I not been obliged to argue a couple of cases in our supreme court. But, sir, upon the general question of the comparative merit of our judiciary I am bound to say that, judging from

what history tells me of the judiciary upon the other side of the water, judging from what I have myself seen of those judges in the actual discharge of their duties, judging from what I have seen of the judiciary of the United States supreme court sitting in bench with all the dignity of their gowns about them—(I believe the amendment of the gentleman does not propose gowns for our judges) [Laughter]—judging from what I have seen of judges holding their appointments for life under United States authority in various parts of this country; judging from this I undertake to say that the men who have heretofore sat in our court of appeals under this system which is so loudly and eloquently denounced here, have been as a class the equals of any judges that have ever sat in any court that the world has ever seen. I have no hesitation in putting Addison Gardiner, Samuel L. Selden, Freeborn G. Jewett, Greene C. Bronson, Hiram Denio, aye, and George F. Comstock, by the side of any judges that have ever sat upon the bench in any country at any time. Sir, I propose to profit by what I have seen and by the experience of the past, and whether the Convention concurred with me or not, there shall be upon this floor at least one protest against the denunciations direct or indirect that have been so recklessly hurled at the judiciary of the State—chosen under the system which has governed us for the last twenty years.

Mr. DALY—As the gentleman from Rensselaer [Mr. M. I. Townsend] was not present during the discussion yesterday, and as I was one of the speakers, I beg leave to correct him so far as I am concerned by saying that I hurled no insinuations against the judiciary of this State from 1846 to the present time either individually or collectively. I stated nothing but facts.

Mr. M. I. TOWNSEND—I have no doubt that the gentleman is strictly accurate in the statement that he has made. But, we have heard here so much upon this subject, that I am justified in my mind in making the remarks which I have made, which however, were not intended to refer particularly to the gentleman from New York [Mr. Daly], or to the other gentleman from New York [Mr. Evarts], who spoke to-day, because I did not hear their remarks. Now, I understand that an argument was presented by one gentleman, the substance of which was that it was unkind to turn these men out of office just when they have lost their usefulness, and their capacity to serve the State, leaving a judge like an old ox—the gentleman did not use that comparison, but I will use it—like an old ox after his work is done turned out to starve in a bush pasture. [Laughter.] Now, it is to be remarked that every one of the judges of whom I have just spoken, who held position in the court of appeals left the bench before the favor of the State was withdrawn from him—every one of them either resigned or declined re-election. What caused them to do that? What was the difficulty? There was none, sir. We had for judges the best material there was in the State, and they held the office and performed the duties as long as they chose, and then voluntarily left the bench. Sir, is it like going into a "bush pasture" to starve for a man to leave a position where he has a salary of three thousand

five hundred dollars or even five thousand dollars a year, and go into a practice which yields him ten, twenty, or even forty thousand dollars a year? I am dealing with numbers that are within the knowledge of gentlemen in this room. Ex-judges in this State, those of them whose faculties are unimpaired, will receive from ten to forty thousand dollars a year for legal services, so that we need not adopt this provision with a view to do justice to these excellent public services for the very good reason that a man who is worthy of a seat upon the bench of the court of appeals, always makes a pecuniary sacrifice in taking the place, and when he leaves it, if he leaves it with faculties and character unimpaired, he goes into a better practice which gives him a more liberal income than he has ever had before. I think I cannot be mistaken upon this subject. As has been well said by the gentleman from Saratoga [Mr. Pond], I do not believe that there is a judge who has left the bench of the supreme court, whether of his own choice or by failing to be re-elected, who is not to-day in the receipt of an income immensely superior to that which he derived from the State. But, sir, are there no evils from allowing him to hold office by such a long tenure? In view of the remarks made by the gentlemen from New York [Messrs. Daly and Evarts], which I am sorry I did not hear, but of which I have received some account, although I have uttered it once before—I cannot help re-stating that at least two judges within the last twenty years have sat upon the bench in the first judicial district, after their faculties had become so impaired that they were to a great degree unfitted for that position. I have myself done business before one of them when his infirmity of lethargy threw him into a sound sleep every twenty minutes upon the bench, and before the other, when he could not have heard the thunders of heaven, had they pealed forth never so loudly. [Laughter.] In regard to these things, at least, I am not mistaken. Both these judges were great men, but infirmities had come upon them, and they could not be removed from the bench, and they would not remove themselves. The kindness of the bar, the feeling of the people toward them for their eminent public services, prevented any action being taken for their removal, and as I have said, they would not resign, yet by this system, which imposes such men upon the people long after they are unfitted by age and infirmity for the position that these gentlemen advocate so earnestly. I know, sir, that when we turn and look at the past, everything seems rose-colored. We look at the past through a rose-colored glass. The evil that men do dies with them, except in very rare instances, and the good is remembered. I know that England has had many fine judges, and we are inclined to look upon the judiciary of that country with unmixed admiration. The great body of us draw our blood from England, and when we read the English judicial history, we are inclined to dress up their judges in bright colors. We dwell affectionately upon the memory of Lord Mansfield and Lord Hale, and forget that she had a Scroggs and a Jeffries. So it is with our own

United States judiciary, and yet a good many things have occurred in connection with that judiciary that it would not do to speak of. If I chose I could particularize some of the beauties of that United States system under which men hold office as long as they live, unless removed for cause. But I will forbear. Now, I have spoken strongly, and I confess that I feel strongly upon this subject. My profession is that of a lawyer, my business is in the courts. I would have a court that should not undertake to hold the position of a master over me. If there are gentlemen of the legal profession who prefer to have it otherwise I certainly cannot find fault with them. I only speak for myself; but for myself I do not believe in putting with my own hand an irresponsible master over my own head. But it is said that your judges, if they do not hold office for this long tenure, are not sufficiently independent. I am speaking now particularly with reference to the court of appeals, and I ask, has there ever been a judge of that court in this State that the community did not believe to be an independent man? In the long line that I have named, has there been one of them that the finger of suspicion has ever been pointed at from the first to the last? I am speaking now of men who are off the bench. I say this because I do not know but there may be those who would suppose, from my speaking in such eulogistic terms of that court, that I was currying the favor of the judges now on the bench; but I am speaking of men who are no longer on the bench, and several of whom have gone to their last account. I ask again, is there one of that long line of worthies toward whom the finger of suspicion has ever been pointed? If not, why make this change?

Mr. VAN COTT—If the gentleman from Rensselaer and the people have been so entirely satisfied with all these judges, why have they been turned out?

Mr. M. I. TOWNSEND—They were not turned out.

Mr. VAN COTT—The system turns them out.

Mr. M. I. TOWNSEND—The system only makes a prudent provision by which the people can get rid of undesirable men, if such an one happens to be elected. It is quite possible that such a man may be elected, and then the people may want to get rid of him for the same reason that gentlemen from a certain portion of the State are here now telling this Convention that we must overturn the system in order to get rid of certain judges. Yet judges of the court of appeals have not been turned out—

Mr. HALE—Will the gentleman allow me to ask him a question?

Mr. M. I. TOWNSEND—Yes, sir.

Mr. HALE—I wish to ask the gentleman whether he means to say that every judge who has left the court of appeals bench has left it voluntarily; and if, in any instance, a judge who has filled his term of eight years satisfactorily and faithfully, has been defeated and left off the bench through the vicissitudes of party?

Mr. M. I. TOWNSEND—It may have occurred to some one—

Mr. HALE—I would ask the gentleman further if Judge Alexander H. Johnson was not defeated,

and if Judge George F. Comstock was not defeated—

Mr. M. I. TOWNSEND—I understand not. I understand that Judge Comstock declined a re-election.

Mr. COMSTOCK—I would inform the gentleman that I was defeated by sixty thousand votes. [Laughter.]

Mr. M. I. TOWNSEND—Well, I am glad that the gentleman's politics were defeated, but I am sorry that his judicial abilities were lost to the State. My impression was, however, that he declined a re-nomination; but I am very glad to be corrected, because, although very confident in my opinions, I am very often wrong in my recollection. I was saying, sir, that it is possible to get bad men upon the bench. I do not mean a very bad man, but a man not well suited to the position. I think the danger of getting such a man would be much greater by the appointive system, because those who nominate the judges will be more particular in selecting their candidate when it is known that he is to bear the scrutiny of the people of the State. If we were certain of always getting the best men and the best talent, or even good men, I should have no sort of objection to this long tenure, because such a man might have magnanimity enough to resist temptation in his position, and be just as laborious, just as courteous, just as pains-taking as if he had occasionally to bear the scrutiny of the people, although I must say that I believe that in the majority of instances it would not be so. But since it is perfectly possible that a bad man may secure an election, I think there should be some time not far distant, fixed, at which he could be got rid of, and for myself, I should prefer eight years. I am entirely willing, however, to adopt the term of fourteen years if it is thought best that there should be some time at which a judicial officer should necessarily go before the people that they might scrutinize and pass upon his merits. I have said now substantially all that I desire to say upon this subject. It matters very little to me. My own services as a lawyer and in other respects are nearly finished. At all events, a few years will conclude them. But I desire here to bear my testimony against this attempt, as I deem it, to innovate upon the principles that are now fully established upon the minds of the people of this State, so fully established at all events, that I think they cannot easily be eradicated.

Mr. COCHRAN—I want to ask the gentleman whether the judicial functionaries in the city of New York, to whom he has alluded as overcome by age and infirmities, were not at the times to which he refers, long past the age of seventy years?

Mr. M. I. TOWNSEND—I think they were. Now, sir, believing that I have spoken with sufficient fullness to set myself right upon this subject, I will say no more.

The question was put on the amendment offered by Mr. Hale, and, on a division, it was declared lost, by a vote of 43 to 48.

The question recurred on the amendment proposed by Mr. Smith, as amended.

Mr. BALLARD—Is it in order to move an amendment?

The CHAIRMAN—An amendment is in order.

Mr. BALLARD—I move to strike out from the middle of the section these words, "At the first election of judges under this Constitution every elector may vote for the chief judge, and only four of the associate judges."

The CHAIRMAN—The Chair must hold that that amendment is not in order. As that division has already been adopted by a distinct vote, the object of the gentleman can only be affected by a reconsideration of that vote.

Mr. BALLARD—Then I move to reconsider the vote by which that provision was adopted.

Mr. HALE—I rise to a point of order.

The CHAIRMAN—The gentleman will state his point of order.

Mr. HALE—It is that the vote has already been reconsidered by which that provision was adopted.

The CHAIRMAN—The Chair is of the opinion that the gentleman from Essex [Mr. Hale] is wrong upon that point. Two of the propositions of that amendment have been reconsidered, but not the one referred to by the motion of the gentleman from Cortland [Mr. Ballard]. The question is on the motion of the gentleman from Cortland [Mr. Ballard] to reconsider the vote by which the proposition that only four associate judges should be voted for upon any one ballot.

Mr. BALLARD—I make this motion upon this simple principle; I do not believe in taking from any elector the right to vote for any of the judges that are put in nomination. I think that if we adopt an elective system at all, we should carry it out in all its length and breadth, and that every elector should have the privilege to deposit his ballot for all the judges placed in nomination.

Mr. COMSTOCK—I hope the motion of the gentleman from Cortland [Mr. Ballard] will not prevail. I consider this provision of great value in the election of the first bench of the court of appeals, and I think it would also be valuable in the supreme court. In the discussion of the Judiciary Committee, I sustained this principle with all the power that I possessed, when the party with which I acted seemed to be in the minority. I sustain it here now with equal zeal when that party seems to be largely in the majority. I sustain it because I believe it is right, and will give to the people of this State a better bench than a purely partisan election could possibly give. I think the election of a purely partisan bench, of whatever party, would be an unmitigated evil, and that such a judiciary, whether deservedly or not, would be unable to gain or to keep the confidence of the people of the State. This is not a question of representation. It is a question of the mode in which we can best secure the services of good judges. It is not a question of representation, because the judge represents nobody. His duty is single; he is simply a minister of the law. His duty and his only duty is to ascertain and declare the law irrespective of the opinions of any body and every body in the world. This proposition, therefore, is not liable to the objection that has been so often urged against the representation of minorities. I believe it to be the best mode of select-

ing the first bench of the court of appeals, and therefore I am in favor of it.

The question was then put on the reconsideration, and it was declared lost.

The question recurred on the adoption of the amendment of Mr. Smith, as amended.

Mr. ALVORD—Can a motion be made to reconsider the proposition rendering the judges ineligible?

The CHAIRMAN—That branch of the proposition has been reconsidered. The motion to reconsider was made upon that branch of the proposition.

Mr. POND—Is an amendment in order?

The CHAIRMAN—It is.

Mr. POND—I have an amendment to offer.

Mr. BARKER—It seems to me that it is in order to take a vote on reconsidering the proposition whether a judge shall be eligible to re-election, for the main proposition offered in the substitute of the gentleman from Onondaga [Mr. Comstock] is different in its terms. When the vote was taken before, the chief justice was nominated by the Governor; now this section provides that he shall be elected by the people. I move the words "and shall be ineligible to a second" be stricken out.

The CHAIRMAN—The Chair holds that the only amendment adopted on the motion of the gentleman from Onondaga [Mr. Comstock] was as to the election of the chief justice. It does not affect the amendment as it stands adopted by the committee as to election and eligibility of judges.

Mr. POND—My amendment reads as follows:

SEC. 2. There shall be a court of appeals composed of ten judges, of whom four shall be those who shall have been elected as judges of the present court of appeals, and who shall be in office at the time of the adoption of this Constitution; and six shall be elected by the electors of the State at a special election held for that purpose, or at the first general election held after the adoption of this Constitution. No elector shall vote for more than four candidates for the office of judge at such election. Provision shall be made by law for classifying the judges so that one shall go out of office at the end of and one shall be elected every year. After the expiration of their terms, under such classification, the term of office shall be ten years. No judge elected for a full term of ten years shall be eligible to a re-election until two years after the expiration of such term. A term of said court shall be held every two months at the Capitol in Albany, and five of said judges shall constitute a quorum, a majority of whom, if they concur, shall be sufficient to make a decision or pronounce a judgment. Provision shall also be made by law for designating the chief justice at and the judges who shall hold said terms, so that one-half of said judges shall hold each alternate term of said court, as above provided.

Mr. POND—The amendment I propose, if adopted, will in my judgment, constitute a court of appeals, which will be able and competent to dispose of all the business now in that court, and which may hereafter arise therein. It looks not to the constitution of a commission, but to obviating the necessity for creating that kind of tri-

bunal, for the disposition of the business and the decision of the cases which have been appealed to the court of appeals. For one, sir, I do not like that provision; I think the Convention and the State should adopt some system for the construction of a court of appeals that will be able to dispatch all the business now undetermined that has been carried, and which will hereafter be taken to that court for final disposition. It seems to me the committee and the Convention, in disposing of this first section providing for the establishment of a court of appeals, should determine whether or not they will adopt the idea of a commission, as proposed by the committee. Now, sir, in regard to the commission suggested, the proposition in substance has been recently submitted to the people, and they have with great unanimity rejected it. I do not know of any change of mind on the part of the people that should induce this Convention now to re-adopt that scheme or system, and send it down to the people for them again to pass upon. It seems to me an incongruous system. The constitution of a court of appeals, for the purpose of doing the business of a court of last resort, and then the formation of what may be termed a board of arbitrators, or what certainly is practically an inferior court, to which, a certain portion of the business that has been carried to the court of appeals shall be sent for disposition, presents a very bungling and incongruous system, and for one, I should dislike very much to have it adopted. Now, if this committee shall agree with me, that this scheme for a commission should not be adopted, then the only alternative is to provide in this section for a court of appeals adequate to the performance of all of the business of that court. I think this proposed section will accomplish this object. It provides for ten judges, and it looks to the continuance in office of the present judges of the court of appeals. In the last election we have chosen an able judge for the next eight years. The people have passed upon the question of his fitness and capacity for that position, and they have also elected each of the other court of appeals judges now sitting in that court, for their respective terms. Why should the question be submitted to the people, whether or not the selection thus made should be set aside and thus rendered void; and whether the recently elected judge of that court shall be deposited? They are all good judges; no objection has been suggested against either of them, and this proposed section looks to their continuance in office, and to their constituting a portion of the court of appeals which it proposes to create. I think the force of the court should be increased, though I believe ten judges will make it necessary to have a division of the court. Gentlemen object to double courts. I think the report of the committee on the judiciary has that error incorporated in it, and that the commission recommended by them is an acknowledgment on the part of the committee that the business requires substantially two courts for its disposition. And the question is, whether it shall be disposed of by a court of appeals alone, or by a court of appeals and an inferior tribunal called a commission. By the system I propose, the court is di-

vided into two parts. Five judges will constitute a quorum, a majority of whom may pronounce a judgment; they will hold alternate sessions, making six terms a year instead of four, as the practice now is. If, as is contended by the gentleman from Cayuga [Mr. Rathbun] five judges are sufficient to dispatch the business at a single term, then that will be a proper number for the Constitution of a quorum of the court. I admit this system makes it necessary that the court be divided into two parts; but I say the proposition of the Judiciary Committee looks to that end also; and I say further that the business of this State, with its prospective increase, will make it absolutely necessary to have a court composed of a number of judges larger than it will be found profitable to assemble at one time. Eight is too large; five is large enough; but five is not large enough to transact all the business that will reach the court of appeals. Therefore I insist we must have a court with members enough to hold two separate and distinct sessions. If they hold alternate sessions, provision can be made by law for having these sessions attended by a reporter and thus the decisions made and opinions written at one term will always be made and written out two months before the other term shall make its decisions; and provision may also be made for the furnishing of the court that sits last with the decisions and opinions of the preceding term. In that way there will be harmony in the decisions, and there will be no liability to the objection that applies to the decisions of two different general terms of the supreme court.

Mr. GRAVES—Is it in order for me to move to adjourn?

The CHAIRMAN—Such a motion is not in order in Committee of the Whole.

Mr. GRAVES—The reason I ask is this: I am satisfied the proposition of the gentleman from Saratoga [Mr. Pond] is important, and ought to be carefully examined.

The CHAIRMAN—If the gentleman from Saratoga [Mr. Pond] gives way, the gentleman from Herkimer [Mr. Graves] can make a motion.

Mr. POND—I give way.

Mr. GRAVES—I move that this committee rise and report progress. And I will state the reason for my motion.

The CHAIRMAN—The motion is not debatable.

The question was put on the motion of Mr. Graves, and it was declared lost.

Mr. POND—In regard to the decisions of different general terms there might be conflict, as they are in session in different parts of the State at the same time, and with no method of communicating to the one the decisions made by the other. Hence there is great liability of a conflict of decisions. But in regard to a court of appeals whereof the two parts sit successively at the same place and alternately, with the same reporter being present to communicate the decisions of one branch to the other, there is no danger of collision or of conflict of decisions. Therefore, sir, I submit that the Convention can and should adopt some system by which a court will be constituted capable and sufficient in force to do all the busi-

ness of the State that shall come before it; and to do that, I repeat, we must have a court from which we can form a quorum from half its members, so that one term may hear cases, while the other term is writing opinions and deciding cases previously heard. Without going into the subject any further, I will submit the proposition to the committee, entertaining the opinion that if adopted it will accomplish the purpose desired.

Mr. W. C. BROWN—It seems to me that the proposition which has been introduced by the gentleman from Saratoga [Mr. Pond] is of too much importance to be voted upon without some further discussion, and I should have preferred that some one else had taken the floor and shown what objection can possibly be made to it, and what can be said in favor of diminishing the force of the court of appeals thereby rendering it necessary to establish a commission to dispose of the causes now pending in that court. The reorganization of the court of appeals is one of the most important subjects which can come before this Convention, and we must meet on this section the question of how that court must be organized, not only in regard to the number of judges and their appointment or election and tenure of office, but we have to look through this, and the subsequent sections, and see whether we are taking the best course to establish a court which will be able to perform the duties which must devolve upon it. The great problem which we have to solve in regard to the court of appeals is how we can establish a tribunal of final resort which shall be fully adequate to the task of transacting all the business now pending in that court, and all the business which, in the natural course of things, will in the coming generation come before that court. We are, therefore, bound to meet this question as to whether a court of appeals composed of seven judges will be adequate to that task; and if not, what else we can do to solve the problem now before us. It has been said that we will limit the number of appeals and thereby enable a court of seven judges, or even a less number, to perform all the duties. But it seems to me to be entirely impracticable for us to put any provision in the Constitution of the State by which we can limit the number of appeals that may go to that court; and I do not think we should do it even if we could. That is a matter which should be left to the Legislature; and certainly in providing a court of appeals we should provide a court to which the people of the State may send all important questions. It is evidently conceded by the report of the majority of the Committee on the Judiciary, and by gentlemen who have spoken in this Convention, that seven judges will be inadequate for the performance of this duty. It is proposed to meet the difficulty by adopting the plan invented by the Legislature of 1863, and which was emphatically rejected by the people (in the hope and expectation that this Convention then contemplated, would be able to devise something better), and establishing *two courts of last resort*—for that is precisely what is proposed. You may as well call them both courts of appeals, or both commissions. The proposition, then, is to establish two courts of final resort, with equal jurisdiction, with

equal authority, whose judgments shall be equally final and conclusive upon the parties in the particular suits that may come before them, and whose decisions shall be equally conclusive as authority upon all inferior tribunals, and upon all officers of the government: and which shall be, with equal authority, the guide of the citizen in regulating his conduct and his business affairs. Now, sir, will these two courts decide alike? Will they harmonize in opinion upon the thousands of new cases which will continually every year arise as long as we are a progressive people? They cannot if they would. They will be composed of men of like nature with those who compose the present supreme court, and we know that one general term of that court decides a question in one way, and another general term decides it another way, writing a strong and able opinion to show that the first court was wrong. The first court, or some other general term writes a still stronger and clearer opinion plainly showing that the first court was right and the second wrong. Will there not necessarily be this conflict between these two courts of last resort? And instead of performing their high duty of resolving and settling new questions of law for the benefit of the whole State, will they not rather tend to unsettle and confuse it by conflicting decisions? Will there not be not only that natural conflict of opinion, but may you not expect that there will be jealousy between those judicial bodies? Will not each of them feel that they have as able and as wise men as the other? Do you expect that one of these two tribunals will defer entirely to the other? Do you expect that the present court of appeals, whose name it is proposed to change to commissioners, are going to look up in reverence to the new and unfledged court which is proposed to be formed? I take it not. Do you suppose that this new court to whom you give the name of court of appeals will look up with deference and humility to the old court which will be apparently passing away? These difficulties we have to grapple with; and I believe it is within the ability of this Convention if all its members will give careful attention to the subject to provide for the organization of a court of appeals, whose enunciations when they go forth shall be the law of the land, decisive as authority, decisive in the same court for all future cases, and to be relied upon and followed by all other tribunals, by the officers of the government, and by the citizens; and you will then have certainty in the law, and without it you have uncertainty and confusion. It is not the highest duty of the court of last resort to decide correctly as between two individuals, whether A shall pay a certain sum of money to B or B to A. Their greater and more important duty is to resolve difficult questions of law and expound them for the benefit of the whole State, that the people may act accordingly, and that they may be safe in their action and contracts. It is a trite axiom and perfectly true, in my opinion, and I think the members of the bar will assent to it, that it is better that the law should be certain than that it even should be right. I hope this proposition of the gentleman from Saratoga [Mr. Pond] will be

taken into careful consideration and that we shall form a court of appeals which shall be able to take this whole subject, the whole of the causes which are now pending, and shall be able to dispose of them within a reasonable length of time; and I think we can form a court that will dispose of them, in addition to all new causes, as soon as they can be disposed of by this board of commissioners. There are some two thousand causes pending in the court of appeals. I suppose there are over a thousand of them that remain to be heard and decided, making a large allowance for all that have really been settled, though not taken out of the court, and for those that are merely nominal causes—appeals brought for delay only, and which will disappear as soon as they are ready to be examined. This court of commissioners can hardly be expected to do more than the court of appeals has done in the past, and that will be to decide about three hundred causes a year. In three years they would not dispose of the whole of that calendar, and this court of commissioners and the new court, acting as they will without harmony, and writing weighty opinions against each other, will not dispose of the calendar now pending and the new causes that will arise. They would be blocked, in my judgment, at the end of three years, and very soon we would be compelled to have a new commission or make some new provision. Then, again, the proposition to have a court of commissioners seems to me to be entirely unjust and unequal toward those who are the suitors now in the court. It is desirable that justice should be promptly rendered, if it is rendered at all, between individuals. There are suitors now who have been knocking at the door of justice in the court of appeals for six years without being heard, and from one month up to that time. Now it is proposed that all of these suitors who now have their business pending in the court of appeals shall be put off from a hearing until, in the regular course of things, the court of commissioners can take them up, and that those who have causes coming before the court the day after this Constitution is adopted shall have the preference and have their hearing first. Now, is that right? Should not we, if we provide a court of appeals—one court or two courts, capable of transacting the business which devolves upon that court—should not we give an equal chance to those who have been waiting so long with those who come last? Shall it be that the cause which is appealed to the court of appeals the day before this Constitution is adopted shall have to remain until it is reached in its regular order upon the foot of the present calendar and the cause that comes into the court the day after the Constitution is adopted can be reached at the very first term and disposed of? This is palpably unjust and entirely unnecessary. It is no answer to say that we are to have these co-equal rival courts of last resort to render conflicting decisions for only three years. It is an unnecessary evil, and should not be tolerated for a day.

Mr. GRAVES—No man could have listened to the discussion upon this question without feeling a deep interest in the results of the deliberations

of this body. Commencing week before last, it has been continued from day to day, except as it has been occasionally interrupted by other business, to this time. This discussion has been held upon the original report or the report of the majority of the Judiciary Committee. It has also been held upon both minority reports, and also upon various amendments which have been suggested by different members of this body. Upon these various reports, and upon these various amendments, there is a wide disparity of opinion with the members in this Convention. While these discussions were pending, the gentleman from Saratoga [Mr. Pond] has presented an entire new system, a new organization of the court, differing entirely from the report of the majority, and differing entirely from the reports of both minorities. That report, or that suggestion by the gentleman from Saratoga [Mr. Pond] I believe is not distinctly understood, and the reason why I desired this committee to rise and report, was to suggest that the substitute offered by the gentleman from Saratoga [Mr. Pond], might be printed and laid upon the tables of the members, so that they could distinctly understand it and take it up in the morning. I believe it to be for the interests of this Convention and for the furtherance of its business, that that course should be adopted.

Mr. VAN COTT—I do not desire to extend this discussion, but it will be remembered that day before yesterday the gentleman from Ulster [Mr. Cooke] presented a plan for a court of appeals, with nine judges instead of ten, as in the plan of the gentleman from Saratoga [Mr. Pond], that it also went upon the idea of a double court—two sections of a court. That plan was very thoroughly discussed, and the amendment proposed by the gentleman from Ulster was defeated by a very decisive vote, one of the most decisive majorities recorded in committee on the question. Now, I submit to you, sir, and to the committee, that we have here substantially the plan over again of the gentleman from Ulster, upon which the committee has already passed. It is easy to vary it slightly by adding one or subtracting one without changing the substance of the plan, and to continue this discussion indefinitely. I do not wish to continue it. I rise simply to remind you, sir, that we have already passed upon it.

Mr. YOUNG—I do not agree with the gentleman last up, that this is substantially the plan presented by my colleague from Ulster [Mr. Cooke], and if it was it would meet my approbation. I would prefer the plan presented by this amendment to any other that has been submitted to this Convention; and I think this amendment, or rather substitute for the section, demands the serious attention of every member of this committee. We are now revising and amending the most important article of the Constitution, and in fact about the only amendment to the Constitution that the people demanded was in respect to this court of appeals; and if we succeed in meeting their wants in this respect, we shall not have sat here in vain. Now, this court, consisting of five commissioners, called a commission instead of a court, will not meet with the approbation of the people. I believe, if I remember right, there

was a separate proposition submitted to the people a few years ago for their suffrages, for the organization of just such a court to assist the court of appeals in clearing its heavy calendar; and that proposition was defeated by the people by a most decided vote; and I see no good reason for again trying to impose upon them the same court which they so decidedly rejected. It is perfectly evident that no single court, sitting all the while as a single court, can dispose of the causes which will be brought to the court of appeals; and we might as well undertake now as any time to devise a plan that will facilitate the disposition of causes which are brought to that court. I do not see how the plan presented by the gentleman from Saratoga [Mr. Pond] can be considered as creating a double court; it may be double or single, as necessity may require. The plan is in operation to-day, and has been for years, in the city and county of New York. It is substantially the same plan as that pursued by the superior court of New York city. That court consists of six judges. Two, and sometimes three, of those judges hold a general term, and almost every general term is held by different judges, and in difficult and extraordinary cases all the judges of the court are consulted before a decision is pronounced. I do not know of a court in this State that makes less conflicting decisions than the superior court of the city of New York. Suppose that the court of appeals is divided into two parts, when necessity demands it, five judges sitting in each part. Suppose that those five judges, or four of them are unanimous in pronouncing a decision, it is pretty evident that they have decided the law correctly in that case. But suppose there comes before them a case involving a new and very difficult question of law, upon which three judges are of one opinion and two of another. Then they can order that that cause be heard before the full bench, and you have the most solemn decision that can be pronounced by any court upon earth, upon that question, and when the calendar is nearly cleared all the judges can sit again as one court. At any rate, in my judgment, the decisions will be no more conflicting between these two branches of the same court when necessity requires them to sit as such, than between the one-horse court which you are creating, which is the court consisting of commissioners, and the two-horse court which you are to call the court of appeals proper. It is only proposed that this court consisting of these commissioners shall last three years. Suppose by an accumulation of business the calendar of the regular court of appeals becomes as large as it now is. At the end of ten years then you have to organize this court of commissioners over again, and you have substantially two separate courts nearly all the while, and one of them inferior to the other.

Mr. COOKE—I was satisfied on Tuesday that my friend from Kings [Mr. Van Cott] did not understand my proposition. I felt exceedingly mortified, after endeavoring for an hour to enlighten him, to see that I had so signally failed. He now remarks that my proposition was substantially identical with that of the gentleman from Saratoga [Mr. Pond], presented to-night. The

only difference he sees in the propositions is that the present substitute proposes to employ one judge more than was contemplated in my proposition, but it is the same in every other feature, he thinks. It provides for two courts.

Mr. POND—Will the gentleman allow me a question. If I did not misunderstand the gentleman he says that the only difference between the proposition I have the honor—

The CHAIRMAN—The gentleman evidently misunderstands the gentleman from Ulster [Mr. Cooke].

Mr. COOKE—It is my misfortune to be constantly misunderstood. [Laughter]

Mr. POND—I would like to inquire of the gentleman if I understood him to say that it only differs from his proposition in that it provides for one justice more?

Mr. COOKE—I had not got to the statement of what I esteem to be the difference. I probably shall not arrive at that point to-night. My proposition—I state this expressly for the benefit of my friend from Kings [Mr. Van Cott] so that hereafter there may be no misunderstanding about it—my proposition contemplated a single court composed of nine judges, to be presided over on all occasions by the chief justice, and that the chief justice and four of his associates should at all times form a quorum. That was the whole sum and substance of my plan, and I offered it for the purpose of providing against an excess of business in that court, over and beyond what it was possible for a single court, acting together at all times, forming at all times but a single bench, to do. I presented this plan with the belief, that of all the evils to be apprehended from any system, the greatest was incapacity to do its business promptly. I think it is far better to have decisions of doubtful propriety and justice than not to have decisions at all. When parties take their cases into court I claim that there ought to be a way provided for carrying their cases through the courts and getting judgment upon them. I had rather to-day see half-a-dozen co-ordinate courts of last resort established in this State, than to adopt such a system as will necessarily lead to six or eight years' delay in the decisions of the causes pending in the court. I have from the first considered this the greatest evil; and I have considered it of far more importance to construct a court with a view to its business capacity than to engage ourselves upon the question of how the judges shall be chosen, or for what length of term. My proposition—the gentleman from Kings [Mr. Van Cott] says was voted down by the most decisive vote that has been had in Committee of the Whole. It may be so. I was not paying very particular attention then to the number of voices either for or against the proposition, but I know I left the house with the impression that the proposition was not entirely hopeless, and I have intended, and still intend to have a deliberate expression from this Convention upon a similar proposition. My friend perhaps heard louder voices, and more of them, in the negative than I did. But it struck me, and I still believe that the principle of that proposition will have to be adopted before we arrive at any satisfactory judiciary system. It is, as I

stated the other day, admitted on the face of the report of the Committee on the Judiciary, that this system, which provides for a single court of appeals as they name it, is not to have the capacity necessary to do the business, for, as I said, they have provided independent courts of co-ordinate jurisdiction, a court called a commission, to which the court of appeals can pass over the cases that they have not the time to hear. The same effect is to be given to the judgment of that court as to the court of appeals. Indeed, it is contemplated that the judgments of that commission shall stand as the judgments of the court of appeals, whereas you have not got the judgment of the court of appeals at all, or of any member of that court. Provision is made for a permanent establishment of this kind, so that here is the committee guilty of just this inconsistency. They are denouncing my proposition because it is too much like a double court, while they themselves are the authors of a system that requires two separate and distinct courts of last resort. I propose to offer an amendment at the proper time to attach to this section, whether the substitute is adopted or whether the section as reported by the committee is adopted. I propose to offer an amendment providing that a majority of the members of that court, the chief justice included, shall constitute a quorum. Then with a court of seven judges, if it is true that that court is sufficient to do the business, they will not have to separate and divide. If the court finds that it is not capable of doing the business, as a matter of necessity, they can separate in the way I have recommended, and that I claim will be far better than to start out with two separate and distinct courts. I do not know what objection there can be to that provision. With a court of seven judges, according to my idea, the court sitting will have four judges—the chief justice and three judges. This will be a very respectable court in point of numbers. But still I should rather have nine judges, and then let them sit together and act together, if in that way they can do all the business which finds its way into the court. They need not divide at all, but continue together, as this section contemplates, unless by the increase of business it becomes necessary for the court to do something of that character in order to relieve the calendar. Then the evil, if there is any, will be less, I think, than to commence with two separate and independent courts.

Mr. HALE—I rise merely to add my testimony, if it be necessary, for the benefit of those gentlemen who have not been here during the previous discussion, to that of the gentleman from Kings [Mr. Van Cott], that the principle of this amendment has been very thoroughly discussed and has been disposed of in the committee. It will be recollected that when this section was reached, the first amendment proposed was by the gentleman from Montgomery [Mr. Baker], who proposed that the number of judges should be nine. The question was distinctly before the committee as to whether it should be nine or seven. The proposition of the gentleman from Montgomery [Mr. Baker] was voted down. Then the gentleman from Ulster [Mr. Cooke] offered his amendment. The whole discussion in regard to that

amendment was as to the propriety of a court which could be divided into sections and which should be capable of working in sections, separate from each other. The gentleman from Onondaga [Mr. Andrews] stated, and I think showed very conclusively from the statistics that he brought to the attention of the committee, that the accruing business of that court was not such that a single court of seven judges if relieved of the embarrassment caused by the present accumulation of business would be unable to do it, and do it promptly. The gentleman from Ulster [Mr. Cooke] argued the other way, and the whole discussion turned upon the question as to the necessity of having a court of more than seven judges. After full deliberation, after weighing the arguments that were adduced upon each side, and looking at the facts that were brought forward, it was decided by the committee then that a single court was sufficient and that seven was a sufficient number of judges. That principle having been decided, I hope that the question may be taken without a prolonged discussion, and that the committee will have no difficulty in arriving at a conclusion.

Mr. RATHBUN—I am opposed to this amendment, although originally I was in favor of a plan substantially like it. When I first came here I was in favor of precisely such a proposition as presented by the gentleman from Ulster [Mr. Cooke], but upon reflection and conversation with various members of the Convention I have become satisfied that instead of having one court we should in fact be making two courts of appeals, and that the difficulty we encounter by eight general terms would be just so much more, so much greater, as eight was greater than two; that to have two courts of appeals is to have the law unsettled and uncertain, because no two courts in the country always agree, and the law will never be settled so long as we have two courts of equal jurisdiction, passing upon questions coming before them. This is most distinctly two courts, and if it is to prevail I insist that it shall be divided, and that one part of it shall be located in the eastern portion of the State and the other part of it be located in the western portion of the State. If we are to have two courts, then I demand that a part of that court shall be located so as to accommodate the bar and the parties in the western portion of the State, while the other may be located in New York or Albany, wherever it is convenient and will accommodate that portion of the State. It would not change the result of the practice in that court a particle. One court hears arguments in one month, and the judges retire with their papers for the purpose of discussion and decision. While they are doing that, the other court is upon the bench hearing arguments, and the same questions which the first court have taken and carried away comes up, and they hear the arguments, and they take their papers when the term ends and go away and write decisions; and one case is decided one way and another exactly like it another way; and each is final. They have got two conflicting decisions, and that is the end of the law. They are in the court of last resort. There is no forum to go to above that. Thus they have switched off in

different directions, and then begins a new scramble for supremacy between those courts. The bar all over the State, who, having cases in the court of appeals, find a decision in one branch of the court that covers their case, and the opposite side find that it will suit them better to get into the other court; then comes a tug, each desiring to get into the court which decides their way; and we shall have a beautiful specimen of affidavits and scrambling to get out of one court and into the other. One gentleman says that the superior court of New York is organized the same as proposed in this amendment. They divide, and hold two independent terms. Well, that is no worse than our eight general terms of the supreme court. They have but two terms, and they decide. But he forgets that after that there is another court of last resort, where their conflicting decisions may be determined, and that the right of appeal from that court is direct to the court of appeals. They can go before that court which will determine what the law is. This amendment of the gentleman from Saratoga [Mr. Pond] differs from that of the gentleman from Ulster [Mr. Cooke], in simply this single idea: The gentleman from Ulster [Mr. Cooke] proposes that the chief justice should preside in both courts. Now, sir, I insist that it is better to have his than this. And why? Because, instead of having a reporter to stand up and tell the two courts what had been decided, they would have the presiding judge there to tell them what had been going on in the other branch. But he is not to do any work of discussing and deciding. He is only to hear the arguments, to be on the bench, to sit in the court and regulate the order of business; and the other judges are to decide the cases. But he would be present and it would not be much labor for him to report, first to one court and then to the other, the cases heard, the questions discussed and decided in the other branch of the court.

Mr. COOKE—Will the gentleman propose an amendment to that effect, that the presiding judge shall not do any thing but preside?

Mr. RATHBUN—I should not; I assumed that it must be so. How can he find time to do any thing when constantly presiding?

Mr. COOKE—It is not to be assumed according to the proposition that I presented.

Mr. RATHBUN—I understand the proposition to be this, that the chief justice is to preside at the sitting of both courts. While the chief justice is on the bench at one term the others are deciding cases.

Mr. COOKE—That is not—

Mr. RATHBUN—I prefer not to be interrupted. He is presiding on the bench all the term, while the other court is deciding; and when that court get all they can dispose of, and retire, the other comes on the next month, and he presides again. I would like to know what he is to do in the way of deciding causes. And I submit that he can only be put there as a source of general intelligence, so as to advise the four other members of the court that their brethren have had a case argued before them, embracing the same question, and before you decide this question, you ought to consult and agree with them. There-

fore I prefer his plan altogether to this. The Committee of the Whole have sat here and heard arguments for days. That committee has discussed and rediscussed all these questions, and after this subject has received the utmost attention and deliberation of this committee, it has decided that it created two distinct courts, and ought not to be adopted, and they so decided by a large majority—in my judgment, decided it correctly. Now, sir, gentlemen who were absent during that discussion, have come in, and now we have to go over it again. That is the inconvenience of having two Conventions. We are in the same condition as the court will be, organized into two courts. We are running two Conventions. One Convention sits here and works, and decides questions as they arise: then comes the other Convention known as absentees. Then we are compelled to go over the entire work again, and spend day after day in re-arguing, to see if the second Convention cannot reverse the decision of the first. It is a beautiful illustration of one court with two heads, or two courts with one head. I think it is about time that we should settle down upon something, and when we touch bottom, at least hold on and stand by something, and not permit every member of that other Convention who returns, to re-open and rediscuss things that had been disposed of in his absence, and thus waste the time of the Convention in the repetition of arguments already heard and decided. I would rather have the court of appeals as it is to-day, than to have the system proposed. They do not disagree with themselves very badly; except when the judges come in from the supreme court and take a scramble with the regular judges to see which shall prevail. Then we get things generally topsy-turvy. Then after a while they get pretty near right again. But between these two courts you will have constant conflicting opinions, and a paper warfare just as we have had between the old supreme court and the court for the correction of errors. No man on earth could tell what the law is from the decisions in our general terms, until he saw what the court of appeals had to say on the subject. Then he is not very apt to know long what it will be or is, because when the judges come up from the court below, they sometimes overturn the court of appeals and reverse their decision. I hope we shall not commit that terrible folly of having two independent courts. Better have none. Abolish the court of appeals, let the supreme court be the court of last resort. I would rather so have it a hundred-fold than to have this thing, two courts running and called one court. Why not call it two courts of appeals? For it is nothing else—two courts of last resort, independent, and with co-ordinate jurisdiction. We shall be laughed at all over the State, and we should deserve to be laughed at to get up such a thing as that; and I mean to have it understood that I am against it. I shall vote against it, because I do not like to be laughed at. If a man gets angry with me I can put up with that, but to be laughed at, of all things under heavens, I dislike.

Mr. COOKE—I will not detain the Convention, but the gentleman has started a new argument,

that this question has been decided; and he sets up the former decision in bar of any further examination of this subject. I demur to this plea. I am not disposed to laugh at the gentleman, neither will I get angry at him; but I would like to have him understand what I mean by my proposition. It is that the chief justice shall take part in the hearing of arguments and also in the deliberations, the consultations of the court. The chief justice takes his seat in the court with four judges on the first day of January, for instance, and they continue in session for two weeks. Then these four judges and the chief justice can go home and write opinions until a week before their next term, which will be the 1st of March. But on the 1st of February the chief justice takes his seat with the other four judges, and they continue in session for two weeks. That leaves the chief justice a week to himself before it is necessary to go into consultation with his former associates. Then he goes into consultation with them: and it is to be presumed that as he presides on the hearing of the arguments he will have a perfect knowledge of the points that have been raised and argued. Indeed he will have been furnished with the points, and will have the arguments with him when he goes into that consultation during the last week of February; so that if occasion should arise he will be able to say to those judges. "That same point arose and was argued at the last term," and he can order the assembling of the whole court, calling them all together for the purpose of consultation. My proposition provided also for that. If the gentleman can see any possible way to have conflicting decisions under such circumstances he can only see it through the ignorance or inattention of the presiding judge, who ought at least to know what questions had been argued in his court. I say that if conducted in that way it is not as liable to conflicting decisions as the court is in the way it is conducted under the present system. I cannot see any chance for a misunderstanding. The moment either branch of the court takes up a question which has been considered by the other, even after they may have written their opinions upon it, the chief justice can say, "This question was gravely and elaborately discussed week before last before myself and the other judges, and I consider the question of such importance that I deem it necessary to call all the judges together to pass upon it." Or suppose one branch of the court decides a principle without such consultation with the other branch. That decision becomes *stare decisis* as much as though the full bench had spoken it, and the other branch of the court are as much bound by it. If gentlemen can see any thing that subjects this scheme to the objection of duality they see in it a plan which I have not presented. Gentlemen make this objection because they do not understand my plan. I am entirely astonished that my friend from Cayuga [Mr. Rathbun] should at this time express himself ignorant of that plan.

Mr. YOUNG—I would like to ask my colleague whether one branch of this court would not be competent to dispose of those cases which are brought into the court of appeals merely to get time to raise the money to pay?

Mr. COOKE—I fear they would not be able to do justice to that class of litigants.

The question was put upon the adoption of the amendment offered by Mr. Pond, and it was declared lost.

The question recurred upon the amendment offered by Mr. Smith, as amended.

Mr. EVARTS—I move to strike out from the proposition as it now stands the last clause, that no person shall hold the office of chief justice or judge of the court of appeals longer than until the first day of January succeeding the time when he shall have arrived at the age of seventy years. There being a constitutional limitation of the term of office to fourteen years, the people having the choice of electing a man of whatever age they prefer, I can see no propriety in this restriction of the choice of the people—

Mr. HAND—I rise to a question of order. I submit that that very question has been raised and settled by a proposed amendment exactly like that.

The CHAIRMAN—The Chair rules that the point of order is well taken.

Mr. EVARTS—Then I move a reconsideration.

Mr. PRINDLE—I raise the point of order that it has been already reconsidered.

Mr. EVARTS—In that condition of things it is hopeless. [Laughter.]

The CHAIRMAN—The Chair is of opinion that it has not been reconsidered.

Mr. HAND—It was voted down, and that vote reconsidered, and it was voted up. [Laughter.]

The CHAIRMAN—The Chair will state that this clause of the amendment was adopted on reconsideration, on the motion of the gentleman from Chenango [Mr. Prindle].

Mr. EVARTS—Do I understand the Chair that I am in order or out of order?

The CHAIRMAN—The motion of the gentleman is not now in order.

Mr. W. C. BROWN—I offer the following amendment which I move to lay upon the table, and that it be printed.

The CHAIRMAN—The motion to lay upon the table is not in order in Committee of the Whole. The amendment can be now received and considered.

The SECRETARY read the amendment as follows:

Strike out section 2, as reported by the majority of the Judiciary Committee, and in place thereof insert as follows:

"SEC. 2. The court of appeals shall be continued; but as soon as practicable after the adoption of this Constitution, shall be composed of nine judges, including those then in office elected to that court. They shall designate one of their number as chief judge, who shall act as such during his continuance in office. In case of his absence or inability to serve, another shall in the same manner be designated to serve for the time of the absence or disability; and when a vacancy shall occur in the office of chief judge, it shall be filled by the judges of the court from their number; and they shall have power to appoint or remove a clerk of the court, a reporter thereof, and such attendants as may be authorized by law. General terms of the

court shall be held as the court shall appoint, but not less than four in each year. A majority of those in office shall constitute a quorum; and the concurrence of a majority of the quorum shall be necessary to a decision. The judges shall divide, from time to time, into two classes; which classes shall be co-ordinate courts, and shall hold sessions at such times as the general term shall appoint. The chief judge shall divide the calendar between them, subject to rules to be prescribed by the general term. Three or more of the judges shall constitute a quorum for a class. The decision of either class shall be the judgment of the court, and decisive as authority; except that if any judge dissents from his associates, he may certify the case to the general term, when it shall be reviewed, with or without further hearing of the parties, as the general term may, by rule or special order, direct. And the dissenting judges may, with the concurrence of the chief judge, suspend the execution of the judgment, on such terms as may be proper, until the decision of the general term. If the classes differ at the same time upon the same question, their decision shall be conclusive upon the respective cases; but the court at the general term shall, by resolution, declare the law as it shall govern future like cases. Whenever the calendar shall be so far reduced as that in the opinion of the court they can perform the whole duty, sitting as one body, they shall hold only general terms. Thereafter no vacancies that occur shall be filled, except that the number of judges shall not be reduced below seven. But the Legislature may provide for an increase of the number, and a division into classes as before, if required by an increase of business.

Mr. SPENCER—I move that the committee now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Spencer, and it was declared lost.

Mr. W. C. BROWN—I desire to add but a very few words to what has been said upon this subject. The proposition which I present is very much the same as the other proposition, with this exception: that in the proposition now before the committee, the two classes of the court of appeals are to be continued only so long as may be necessary to dispose of the accumulation of business which is in that court. The section provides that as soon as the calendar can be so reduced that the whole business can be transacted in general term, then the division into classes shall cease, and the court shall hold only general terms. There is the further provision, in order to meet all possible contingencies of increase of business during the time the Constitution we now frame shall be in operation, that the Legislature may provide to increase the number of judges again so that the business may be dispatched. I suggest this amendment in order to meet the objection that has been made against the proposition of the gentleman from Ulster [Mr. Cooke], and the proposition of the gentleman from Saratoga [Mr. Pond]. I think my plan will obviate the necessity of having two separate and independent courts, which will

give conflicting decisions, and will require two chambers in the one court only when and so long as may be imperatively necessary. With these remarks I renew the motion that the committee do now rise, report progress, and ask leave to sit again.

Mr. HAND—I raise the point of order that no intervening business has been done since the vote was taken on that motion.

The CHAIRMAN—The remarks of the gentleman from St. Lawrence [Mr. W. C. Brown] have intervened.

The question was put on the motion of Mr. W. C. Brown, to rise and report progress, and it was declared lost.

The question was put on the adoption of the amendment offered by Mr. W. C. Brown, and it was declared lost.

Mr. CHESEBRO—I desire to make a motion which, without explanation, might perhaps be considered as passing in review a decision of the Chair, but which, with some explanation I think may be made without that interpretation. My motion is to strike out from the section the words that the judge shall be ineligible for re-election for a second term. I desire to call the attention of the Chair to the proposition, in order to see whether I am right upon the question of order. This question of ineligibility was voted upon when the second section was under consideration; but the section proposed by the gentleman from Onondaga [Mr. Comstock], upon which this vote was given, was a different section from that which is now under consideration. This is an entire substitute for that section, and therefore I contend that it is in order to offer that amendment.

The CHAIRMAN—The Chair must adhere to the decision it has previously given upon that point. The amendment of the gentleman from Onondaga [Mr. Comstock] was not a substitute for the whole section, but only a distinct amendment as to the election of the chief justice. Such was the decision of the Chair, and the question upon the motion of the gentleman from Onondaga [Mr. Comstock] was so put by the Chair and so passed upon by the committee.

Mr. CHESEBRO—Then I misapprehended the gentleman; for when he rose I understood him to offer his amendment as a substitute for the whole section.

Mr. ALVORD—I would like to have the Chair review its decision in that regard. That amendment seems to me to have changed entirely the nature of the original proposition, by making the office of chief justice elective rather than appointive. It makes a different thing of it from beginning to end; and those who voted in the first instance for ineligibility to office after a certain time, did so in conjunction with the provision for the appointment of the chief justice; but now the provision being for his election by the people, it becomes a different proposition; and members who might desire that restriction of the right to appoint, may not desire that restriction upon the choice of the people. It strikes me, therefore, that this is a distinct proposition from that which was decided, and therefore, in order.

The CHAIRMAN—The Chair must adhere to its ruling; but if there be no objection it will entertain the motion to amend.

No objection was offered.

Mr. CHESEBRO—I do not desire to discuss the question at any length. The committee have adopted a proposition by which they allow a judge to sit until he is seventy years of age. They thereby prescribe a limitation of the period so far as age is concerned. Now, it strikes me that the only question to be submitted to the committee, in view of this amendment, is whether or not it is proper for this committee to limit the power of the people to select their own representative for a judge upon the bench. Admitting the elective principle, that the people are competent to select the judges of the court of appeals and the supreme court, I submit that we have no right, and that we should not exercise the power to limit their choice by saying that they shall not re-elect a person who has already served upon the bench. I am not particular about the period of time, whether it shall be fourteen years or a less period, so that the judge shall be elected in the first instance. But I do submit that we shall not take from the people the power to re-elect a judge to that position, who shall have already served the full term of fourteen years. I trust, therefore, that this amendment will be adopted.

The question was put upon the adoption of the amendment offered by Mr. Chesebro, and the result was—ayes, 40; noes, 29—no quorum voting.

Mr. BICKFORD moved that the committee rise and report progress.

The question was put on the motion of Mr. Bickford, and it was declared carried.

Whereupon the committee rose and the PRESIDENT resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Judiciary, and had made some progress therein; but it appearing, on division, that no quorum was present, had instructed their Chairman to report that fact to the Convention.

Mr. ANDREWS moved that the Convention adjourn.

The question was put on the motion of Mr. Andrews, and it was declared carried.

So the Convention adjourned.

FRIDAY, December 6, 1867.

The Convention met at ten A. M., pursuant to adjournment.

Prayer was offered by the Rev. T. R. RAWSON.

Mr. EDDY presented the petition of Wm. N. Deming and others, against the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. L. W. RUSSELL presented memorials of C. C. Montgomery, and other citizens of Waddington, for the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. E. P. BROOKS presented the memorial of Isaac Rodbourne and others, against the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. BEALS presented the petition of A. H. Lefin, and other citizens of Herkimer, for the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. GOULD—Mr. Stratton, of New York, has received a telegram stating that one of his relatives is in a very dangerous condition, and he has requested me to ask leave of absence for him for to-day and to-morrow. Mr. Mattice, too, has requested me to ask leave of absence for him for a week, in consequence of the illness of his father. I have also been requested to ask leave of absence for Mr. Rathbun for two days, Friday and Saturday of this week.

There being no objection, leave of absence was granted in each case.

The PRESIDENT presented a communication from the Secretary of the Convention, in response to the resolution of Mr. E. Brooks, calling for information in regard to the present state of the business of the Convention.

Mr. ANDREWS—I move to postpone the further consideration of the special order, the report of the Committee on the Powers and Duties of the Legislature, until next Wednesday morning, at ten o'clock. I do this that we may not break in upon the consideration of the Judiciary Committee, and for other reasons generally connected with that matter.

The question was put on the motion of Mr. Andrews, and it was declared carried.

Mr. McDONALD—I offer the following resolution:

Resolved, That debate in Committee of the Whole on the number, tenure of office and mode of selection of judges of the court of appeals, terminate with this morning's session, and that no member shall speak more than once on any one proposition, and if he has spoken before in this committee, not longer than fifteen minutes.

I offer this resolution because, if there is any question upon which this Convention is prepared by the experience of a large majority of its members, to vote without a prolonged discussion, it is this question of the judiciary; and it does seem to me that we have had all the discussion upon that subject that will be profitable to us. As will be seen, the resolution allows any member who has not already spoken upon this question, to speak without limit, but to speak only once; while any member who has already spoken upon it can speak but once again, and then only for fifteen minutes. I think it is due to those members who have not yet spoken upon this question that such a discrimination should be made in their favor.

Mr. MERRILL—I move as an amendment that the limitation to fifteen minutes extend to all members speaking upon this question.

Mr. McDONALD—I hope that amendment will not be adopted, because there are some members here who are interested in this matter, and who have not yet been heard.

The question was put upon the amendment moved by Mr. Merrill, which was declared lost.

The question then recurred upon the original resolution offered by Mr. McDonald.

Mr. VAN COTT—I hope this resolution will not be adopted. This is the vital part of the whole system: After we have settled this, the rest of the work on the judiciary question will be very short.

The question was put on the resolution of Mr. McDonald, and it was declared lost.

Mr. FERRY—I offer the following resolution:

Resolved, That on and after Tuesday next, the daily sessions of this Convention shall be as follows: Meet at ten A. M. and at one P. M.; take a recess until three P. M.; meet at three P. M.; and adjourn at six P. M. On Saturdays adjourn at twelve M., until the Monday following at seven P. M.

Mr. ALVORD—I propose to debate that.

The PRESIDENT—The resolution giving rise to debate, will be laid on the table.

The Convention again resolved itself into Committee of the Whole, on the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN—The pending question is on the amendment offered by the gentleman from Ontario [Mr. Chesebro] last evening, to strike out the words "and shall be ineligible for a second term."

Mr. EVARTS—Mr. Chairman, if I understand the question, it is that which was pending in Committee of the Whole at the breaking up of our session yesterday for want of a quorum.

The CHAIRMAN—That is the question.

Mr. EVARTS—We are now brought face to face with one of the elements which has been insisted upon in this debate, and in all other important and responsible discussions, in this and other countries, respecting the constitution of the judiciary, its permanence and its independence. I will not repeat any of the reasons that I gave yesterday for preferring the tenure during good behavior to the tenure during the sovereign's pleasure, king or people, whichever be the form of government under which the question of the constitution of the judiciary is to arise. But say what you will, disguise it as you will, you must give your preference, you must throw your vote in favor either of a judiciary established during good behavior, or of a judiciary which has in its establishment the element of dependence upon the favor of somebody, if not from moment to moment, for continuance in office yet periodically, in a monarchy, when there is a demise of the crown, or when there is an election in a free State. I am obliged to the gentleman from Rensselaer [Mr. M. I. Townsend] for his bold and open recognition of this issue, and for the distinct announcement, on his part, that he prefers the tenure during pleasure, to the tenure during good behavior. He says that, "never, with his consent, will he aid in putting an irresponsible master over his head." Now, as to the responsibility on the part of the judiciary, either to the procedure of impeachment or removal, the largest limitations upon its independence, which have ever been regarded as possible, that is preserved in this prop-

osition, as in the present Constitution. But I charge the gentleman, that when he says he will not put an "irresponsible" judiciary over his head, he means that he will not put an independent judiciary over his head. That was King James's position. He said, "I will never put an irresponsible judiciary over my head." But his was a royal head, and in the government of England he had a royal prerogative, and might well think that that made a difference between an independent judiciary over his head, and an independent judiciary over the heads of his subjects; yet this pride of royal prerogative brought his own son soon to have no head, responsible or irresponsible, upon his own shoulders. [Laughter.] Let me ask the attention of the gentleman and of the committee, to the better language of another king, not supposed to be inattentive to, or unobservant of, his own prerogatives, I mean George III. In the act of settlement which came as the result of the revolution of 1688, wherein the independence of the judiciary was secured, as pointed out yesterday by our learned friend, Judge Daly, there was left one point of insecurity in the tenure. Upon the demise of the crown the judicial offices became vacant, by the commissions of the judges expiring; and at that single point the independence of the judiciary was threatened. Upon ascending the throne George III. communicated to parliament his wish that the commission of the judges should be made independent even of that single opportunity of royal interference; giving this reason: "Because the independence of the judges is essential to the impartial administration of justice, best for the security of the liberties and rights of my subjects and most conducive to the honor of the crown." Now, take from this language what belongs peculiarly to the Constitution of England and let it read, "the independence of the judges is essential to the impartial administration of justice, best for the security of the liberties and rights of the citizens and most conducive to the honor of the State," and I say that for one, I do wish to put an independent judiciary over my head, over the heads of all the people of this State, even over the head of the learned gentleman from Rensselaer [Mr. M. I. Townsend]. An independent judiciary, that is the question. He takes the word "irresponsible." There is no force in it: independent is the word and if God please and we, we shall have in this State an independent judiciary sustaining the majesty of the law over all the heads of all the people of the State, so that, as it is expressed in the Constitution of Massachusetts, "it may be a government of laws and not a government of men." I thank the gentleman further, for giving the one and the only practical reason which he can give, either from observation or experience or history, for opposing the election of judges for the tenure during good behavior. The reason is this. You may get a bad judge and then your situation is remediless. But the gentleman precedes the statement of this reason and his argument upon it by this proposition, that under the system of electing judges we never have had a bad judge, and that all the judges who have graced the court of appeals bench under this system have been the peers of the best judges that history at any time

has shown. What then is the practical value of his fear that under the tenure for good behavior you may get a bad judge whom you would wish to depose but cannot readily get rid of, when we have his own statement that under the same system of election, which is now proposed, except in the matter of the tenure of office, there never has been a judge that any body should wish to get rid of? Why, Mr. Chairman, what feeble fears are these? If it be admitted that under the experience of the past, in our own State, there is no fear of our choosing bad judges, how are we to be frightened from the adoption of this good principle of tenure during good behavior by a fear which is shown, by the gentleman who expresses it, to be wholly groundless. The good sense of mankind has shown that in our system of civilization the public good and the general happiness of the community are promoted by the tie of marriage being made permanent and indissoluble, yet how frightful is it that a man may get a bad wife! This is the "free love" doctrine, in a novel application by the gentleman to the judiciary. "True," he says, "experience, observation, every thing shows that the happiness and well-being of the community require that the marriage tie should be permanent, should be indissoluble, but think of it before you enter into it, or after you have entered into it imprudently, think of it if you should have a bad wife!" To make this parallel with the judicial argument he should add "but to be sure nobody ever did hear of a man having a bad wife." [Laughter.] Now, Mr. Chairman, beyond this there seems to be very little that has been, or can be said, in the way of argument, against a permanent tenure. True, the gentleman from Saratoga [Mr. Pond] entertained us, upon this question as upon so many others, with the statement that "this is a government of the people, by the people, for the people." That we all agree about. The question is, what is a good government of the people, by the people, for the people? What, in respect of this department, is the best arrangement to maintain a government of the constitution and of the laws? What to maintain it as a government of the people at large, by the people at large, for the people at large? This jingle of words is not to frighten us from determining according to our duty, what is the true arrangement of whatever department of government comes under our molding hand, for the advantage of the public. Now, sir, let us look a little further. Gentlemen, pressed by the weight of the argument that it is unjust to the incumbent, and disserviceable to the public, to lose the judicial function in its honored representative at a period of his life when to unimpaired faculties he has added judicial experience, and that therefore the inducements of re-election must be held before the judge, in order to supply the defect in the system of a fourteen years establishment, as compared with a tenure during good behavior, now seek to interpose the privilege of re-election to meet that difficulty. But the privilege of re-election trenches upon the other point in which the tenure for good behavior is vitally important, that is, its independence. Gentlemen admit that upon a term of eight years, there are evils in the recurring elections, and that the influence of them on the judge's mind are not

for the best; but that fourteen years is the magical term that is to rescue us from all this difficulty and danger. If the judge had always fourteen years of his term unexpired, there would be some force in that suggestion; but after six years of his term has elapsed, he is then an eight years' judge, and after two years more, a six years' judge, then a four years' judge, then a two years' judge, and then a one year judge, and therefore, if you introduce this element of re-election, you have pressing upon him with perpetually increasing force, this influence of a near election, which is not to be avoided by a fourteen years' term. If the gentleman can contrive a fourteen years' term which will leave fourteen years of the term always unexpired, I will support it, because that would be a tenure during good behavior. Now, this tenure for fourteen years without re-election stands as a single proposition. It is intended to meet the difficulties which are supposed to grow out of the re-election during judicial life. The term is put at fourteen years as substantially equivalent to a life tenure, and ineligibility for re-election is introduced as avoiding certain evils touching the independence of the judge, and I warn the committee that if you dispense with this condition, that there shall be no re-election, you cannot, on any principle, maintain the fourteen years' term. If the prospect of re-election is a desirable element in the constitution of this office, then nearness of election, nearness of responsibility, nearness to this government of the people thus insisted upon, is obviously best. But no principle, no practical working of the system of election and re-election for terms of fourteen years will bear inspection. You would have many judges who could be re-elected for an eight years' term who could not be re-elected for fourteen years; and therefore you get less permanence under the fourteen years' plan, if you permit re-election, than you do under the eight years' term. Thus, sir, we must choose between the conditions of independence in the judiciary and the conditions of what is called responsibility in the judiciary; and if the principle of responsibility is to outweigh the principle of independence, then we must have short terms and frequently recurring elections. The gentleman from Rensselaer [Mr. M. I. Townsend] gave some illustrations of a practical character of what he supposed to be the evils of a permanent judiciary. He alluded to two judges in the city of New York. One of them—as I suppose, for he did not name them—was a judge appointed under the old Constitution of 1821, whose judicial term expired at the age of sixty. He had the single infirmity of deafness, not touching his general capacity at all. Because of an instance like this in which a casual and single infirmity affects a judge in middle life, are we to be seriously told that a permanent judiciary is not to be thought of? I cannot help thinking that the other judge to whom the gentleman alluded was the late Chief Justice Jones, whom my friend says that he, in a visit to the city of New York, saw in the court-room asleep upon the bench—I did not understand distinctly whether my learned friend was attending the court in his capacity of a lawyer and engaged in the cause, or only as a casual

observer. [Laughter.] Of that celebrated judge I need only say in this regard that the bar of New York had observed that he had as much judgment in selecting the opportunities for snatching a few moments' sleep as in any other matters, and that he was never known to be asleep when any thing was going on that was worthy of his attention. [Laughter.] But let me illustrate the trustworthiness and value of the personal observations of the gentleman from Rensselaer [Mr. M. I. Townsend]. I, as a lawyer, practiced in the court wherein Chief Justice Jones sat, for fifteen years and more, while my learned friend was only a casual visitor for a few hours' observation. I never heard a suitor, I never heard a lawyer object to Chief Justice Jones, that he had not the widest and sharpest comprehension and apprehension of all matters pertaining to the law. The fact is, he was one of the strongest instances that could be quoted to show the value of a permanent judiciary. Let me tell the gentleman and this committee what I witnessed in the court of that learned judge on the last day on which he sat there, at the age of eighty. Having the shortest unexpired time to serve, he was, by our present arrangement, the presiding judge, and on the last days of December the court was held to dispose of all the business before it in which he needed to take part. The bar was crowded by gentlemen expecting the determination of their causes, and the chief justice presided with an array of papers covering the whole desk before him. As was, and always had been, his custom from his earliest judicial life, he took up each roll of papers, having nothing on it but the title of the cause and a memorandum of the judgment of the court, as for plaintiff or for defendant, and then recited in an oral judgment the facts of every case and gave the reasons for every decision. The causes were thirty-six in number, and every member of that bar and every other member of that bench regarded it as the most wonderful exhibition of sharpness and tenacity, and vigor of mind and memory, that had ever been presented by a judge, old or young, upon any bench in this State. Gentlemen may often be found who preserve their faculties unimpaired to the age of eighty, but few preserve also the capacity for work so fully as did that eminent judge. When he returned to the bar he was welcomed by his associates by a public dinner, the most agreeable occasion of that character that ever occurred in the history of the profession in this State, and he afterward continued honorably to support himself at the bar, our equal in labor, our equal competitor for professional employment; and when he had passed the age of eighty-two, upon the retainer of the present chief judge of the court of appeals, then corporation counsel of the city of New York, Chief Justice Jones argued the great five causes brought against the city in the State of New Jersey, and in a summing up of five hours delighted judges, jurors, the bar and the crowd of auditors. This is the judge who is cited to show the practical evils of the principle of life tenure because he happened to be asleep when the gentleman from Rensselaer was in court! [Laughter.] Are we to surrender the instructions of history and experience, whose value cannot be

overestimated, for what the learned gentleman thinks so much more interesting and important—his own observations, if his observations have all been as hasty as this? But further. Chief Justice Jones was not a judge elected under the tenure of good behavior; he was elected for a short term under the present Constitution, and chosen at the age of seventy-two or seventy-four—for I do not remember whether he drew by lot the term of eight or of six years' duration. The justification of the choice was amply shown in his wonderful discharge of the judicial duties devolving upon him; and he died, past the age of eighty-two, by a sudden accession of disease, without one faculty of body or mind lost—"his eye not dimmed nor his natural force abated."

Mr. CHESEBRO—I desire to say a few words in justification of the motion I made last evening, not to respond to the able argument of the gentleman from New York [Mr. Evarts], in all its features, because I concur with him. I concurred with him in the vote which was taken yesterday in favor of a tenure of office for life or during good behavior, or up to the age of seventy years. I have been here during the discussion and have taken part in it, and I have concurred with the majority report of the Judiciary Committee, because I believe that it sets forth the true principle upon which this court, at all events, should be organized. When the committee yesterday by nearly an evenly divided vote struck out that provision, which was so ably vindicated by the gentleman from New York [Mr. Evarts], yesterday and to-day, I moved this proposition, as being, in my judgment, the next best thing to that. And, sir, I think the argument which the gentleman has given us this morning, justifies me in the motion which I made; but it is based upon a different theory. This system of electing judges is one which did not meet my approbation in 1846, and its adoption was one reason why I voted against the Constitution at that time. I did not believe in the innovation, but it has since become the settled rule, and I am satisfied that the people will not now go back upon it. I suppose there is no one in this Convention who thinks that if we should be in favor of returning to the old system of appointment, the people would give their approbation or consent. We must, therefore, take the system upon the theory that the judges are to be elected, depending upon the wisdom of the people in making the choice. Now, what is the effect of the proposition restricting the election to one term? It means this: that the people are competent to select a judge once, but that, at the expiration of his term, they are incompetent to judge whether he is fit for a re-election. Now, I think that if they are competent at one time to judge of the fitness of a man for a seat on the bench, they are as competent to judge of it at another time, and to say, at the expiration of his term, whether he should be re-elected. Take the argument of the gentleman from New York [Mr. Evarts]; take the argument of the gentleman from Rensselaer [Mr. M. I. Townsend] yesterday; they both pointed to judges who had left the bench in the full vigor of their manhood and usefulness; and yet under the restriction contained in this clause, the

State is to lose the benefit of the services of such men, and the benefit of the experience which they will have obtained during their first term of office. Now, upon what is this theory of ineligibility based? It is based entirely and exclusively upon the argument of the gentleman from New York [Mr. Evarts], that the judges must be preserved in their independence, and that if you allow re-election their independence will be destroyed. Sir, I do not believe any such thing. However that may be in regard to the supreme court, or to any other of the courts of the State, I say that no such imputation can be cast upon the judges of the court of appeals; and of all our courts, that is the one which most needs to have the element of permanency stamped upon it. None of the reasons which apply to the supreme court judges, or to the judges of the court of common pleas, or of the superior court in cities, apply to the judges of the court of appeals. They are not brought in contact with the people in the sense in which the judges of the other courts are. They are not liable to those influences which affect, or which are said to affect judges of these other courts. I say, therefore, that if it is desirable, as the gentleman argues it is, that this court should be permanent, and that the tenure of the judges should be during good behavior up to seventy years of age, in which I fully agree with him, then for the reason that it is desirable that the State should have the benefit of the experience which a judge acquires by the fourteen years' tenure of the office, I say that the greater good which the State will secure by re-election quite overbalances all such considerations as those which have been advanced against re-election, because it is supposed dangerous to the independence of the judiciary. The gentleman from Rensselaer [Mr. M. I. Townsend] in one of the arguments which he made in favor of the present system, and in opposition to the long tenure of years or the life tenure, says that observation has taught us that it is unsafe to give a long lease of power to any man in any position. I submit, sir, that that proposition is not true in respect to the judiciary; and, although there may be exceptional instances, that it is not true as a rule. Take the supreme court of the United States, which is the only court of this country to which this observation, so far as it affects the judiciary can apply—the supreme court of the United States, and I ask the gentleman, can he point out any objection to the organization of that court? Is not the law more fairly administered by that court, and with a greater assurance of the respect of the people from the very fact that the judges have this long tenure of office? Now, sir, as I said before, the great reason why I am in favor of this amendment is because it approximates nearer than any other propositions to the life tenure, of which I am strongly in favor.

MR. M. I. TOWNSEND.—Mr. Chairman, yesterday it was cruel and wicked to cut off a judge who had once been upon the bench, "in the midst of his years." To-day it is equally wicked not to do it, and most presumptuous in any individual who hesitates to lay the ax to the root. Now I have no objection to continuing a good

judge in office, as long as he is useful. Nothing that I said last evening, or on any former occasion in this Convention, was intended to convey the idea that the judge who was competent and faithful should go out of office until a period had arrived, when in all human probability the decay of his mental or physical powers should render him incompetent to discharge the duties of the office. It would have been a boon to this city had the men that I named last evening as having occupied seats on the bench of the court of appeals been permitted to continue in office until the arrival of the time when the failure of their powers should render them incapable of performing their duties, and it is because I so believe that I favor the amendment of the gentleman from Ontario [Mr. Chesebrough]. I believe that that amendment is eminently wise and proper. The gentleman from New York [Mr. Evarts] has followed the argument that he made yesterday in favor of the judges holding office for life or during good behavior, by using the same argument to-day as a reason why a judge after serving a term of fourteen years should be ineligible for re-election. That argument seems to be like certain panaceas, put forward by a certain class of physicians, that will cure all manner of diseases of however opposite natures. For myself I distrust the gentleman's medicine in any case, and would no sooner take it than I would those other advertised medicines of which I have spoken. The gentleman seems to be dwelling in English history. He seems to be lost in admiration of the British Constitution and especially of that portion of it which relates to the judiciary. Now, sir, after the insinuations which the gentleman from New York [Mr. Evarts] has seen fit to throw out, I do not pretend to put my knowledge of English constitutional history upon a par with his; but I will say that I have read a little of it. I read a little of it away back at the time when I was residing in that State of Massachusetts which the gentleman has held up for our admiration and imitation, and a little of it since that time; and as I read it, the gentleman entirely misapplies that history and misapprehends the lesson which it teaches in regard to the judiciary. He has got lost and has failed to distinguish between the British sovereign, the king, and the American sovereigns, the people. What has been the object of the struggle in regard to the tenure of judges in England? Why, sir, it has been to prevent the judiciary from being wholly in the power of the sovereign, who was at one time, so far as the judges were concerned, and who, if they were not made independent of him, would be compelled either to do his will against the people, or be removed from office. The struggle was on the part of the people of Great Britain to protect themselves against having a judiciary which should be made up of the creatures of the crown. But, sir, if the gentleman can come so far out of England and English history as to notice the country in which he lives, he will see that here the people are the sovereigns. In England, previous to the time of James II, the sovereign held the judicial life of the judges in his own hands; and what was the result? The result was, that he wielded the judiciary at his will against the liberties of the

people. But the people of England had somewhat the same notion in regard to this matter that the gentleman from New York has. [Laughter.] They had a notion that they would have something to say about it; and so they put it out of the power of the sovereign to wield the judiciary against the people. And I have that confidence in the people of the State of New York to believe no reactionary, however talented, however influential, however experienced, however eloquent, will be able to induce them to constitute the judiciary of this State so that they can be wielded against their interests. It was because the people of this State, as sovereigns, desired to have something to say in regard to this matter that they remodeled the Constitution in 1846 as they did; and my argument last evening was intended to show that the remodeling of the Constitution had not worked ill, and that it had given us as judges of the court of appeals neither bad men, nor incompetent men, nor men swayed by popular prejudice. Now, let us look for a moment at this English judiciary, which the gentleman tells us is placed high above all popular influence. We have had a recent instance of it at Manchester in England. Let me say, at the outset, that I am no Fenian. I think that the whole Fenian excitement, in the form that it has taken, is an utter mistake, and therefore my views upon this question are not influenced by any sympathy of that kind; but I say that there has never been but one court in the United States, whose doings would compare with the doings of the British judges in that court at Manchester on the recent trials of the men charged with the murder of a police officer; that one parallel court was not in the State of New York, but in Virginia, when Henry A. Wise and the judiciary of Virginia concurred in the hurried and barbarous murder of John Brown. There has been no instance in the State of New York, where the judiciary has been swayed by popular clamor, feeling, or excitement, to perpetrate any such outrage as was perpetrated by the judges of Manchester in refusing those men time, either to obtain testimony or to obtain a review of the rulings of the judge upon the trial. And for that matter you may throw in along with the conduct of the judges, the conduct of the British government that had the pardoning and suspending power. England, sir, is a lovely country, a beautiful country, a great country. I draw all my blood from England, but I shall not take the English judiciary, nor the English form of government as my model. So far as I am concerned I propose to be one of the four millions of sovereigns that govern the State of New York. And I repeat, sir, that English history furnishes no precedent for action on our part such as is recommended by the gentleman from New York; on the contrary English history shows that the people of that country had a hard struggle to bring about a state of things in which the judiciary could not be wielded by the sovereign against the popular interest and the popular liberty. I call this Convention to witness that in speaking of the late Judge Jones, I said not one word in disparagement of his personal, moral, intellectual or judicial character. I said that in his latter days he had an infirmity, that he was effected by

lethargy, and that while engaged in the trial of a case before him, I had seen him asleep upon the bench. I did see him asleep upon the bench, and the gentleman from New York has seen him asleep upon the bench and it is unfair on his part to "poison me with laurel-water"—to press Judge Jones' elevated acquirements into his service when he knows that the statement that I made was true, and he will not deny it. It is true, sir, that I have not been in New York as often as the gentleman. There are a great many places in the city of New York that I have never visited; thank God, I was never at the Castle Garden either in the days of the "compromise" or at any other period. I am an humble citizen of the country, holding my own opinions, and I claim the liberty without being criticised offensively by either that gentleman or any other, to put forward the doctrines I hold, notwithstanding the views of that gentleman may differ from mine. He has held up to example the State of Massachusetts, where the judiciary are appointed for life. When did the system originate in Massachusetts? It originated in the days of John Adams; in the days when Massachusetts was in favor of a Senate for life, as well as a judiciary for life. And so did the judiciary system of the United State originate in those same old federal times. It is the same old federal idea, and the idea is none the less a federal idea, a reactionary idea, when it is presented in 1867. Time has cured the notions of a portion of this country of their views in regard, not only to the judiciary, but in regard to other offices. When this matter was first put forward in our country, when the judiciary of the United States was established, when the judiciary of Massachusetts was established, it was desired by many that nearly all officers should hold for life, at all events that the higher and more respectable officers should do so. There was the same feeling then which exists to-day, that a man put into an official position was to be elevated into a sort of a deity, before whom all were to fall down and worship. That notion has passed away; Massachusetts elects her Governor for one year only, her Senators for one year only, her members of assembly for one year only, and she would better her condition if she would do as the truly democratic State of Vermont does, elect her judiciary every year.

Mr. HALE—Will the gentleman allow me a question? Are the judges of Vermont elected by the people every year?

Mr. M. I. TOWNSEND—No, sir; by the people's representatives.

Mr. HALE—By the Legislature?

Mr. M. I. TOWNSEND—Yes, sir. I am not speaking now upon the question by whom the judges should be elected. I am stating merely that the judges in Vermont are elected every year. And I should like to know the difficulty that has occurred in the State of New York, in regard to the independence and uprightness, and the moral judicial standing of men holding judicial positions in the State.

Mr. SILVESTER—Under that system in Vermont, does it not practically result that judges are re-elected during good behavior?

Mr. M. I. TOWNSEND—Yes; and that I ap-

prove of. I would re-elect during good behavior; and if incumbents in the judicial office proved unworthy of trust I would get rid of them as quick as I could.

Mr. ANDREWS—Does the gentleman consider the judiciary of Massachusetts inferior to the judiciary of Vermont?

Mr. M. I. TOWNSEND—Certainly not superior. And I am free to say, although it is my native State, that I consider the judiciary of Massachusetts to-day, since the death of Judge Shaw, decidedly inferior to the judiciary of the State of New York. I have that much of pride in the State of my adoption, and I shall be the last to soil the nest in which I sit. Now, permit me to say another thing. The gentleman from Ontario [Mr. Chesebro], with whom I concur in regard to amendment, has let out the real truth of this matter, and I thank him for it. The idea is that the judiciary should not only hold for life, but that the judiciary should not be elected by the people.

Mr. CHESEBRO—Will the gentleman allow me? Did you understand me to say I was opposed to an election?

Mr. M. I. TOWNSEND—I understood the gentleman from Ontario [Mr. Chesebro] to say that he voted against the Constitution of 1846, because he believed it was better that the judges should be appointed than elected; and that now there was no hope of returning to the old system. And I will venture to say that every gentleman on this floor who wishes judges elected for life, if you could know the internal workings of his mind, thinks with the gentleman from Ontario [Mr. Chesebro]. I believe the people of this State understand perfectly well that it is attempted to do here precisely what James II wanted to do in England, and did do until he lost his throne, and that is, to make and control the judiciary, independent of the people of the State. And if you cannot make them independent, then contrive the ways and means by which they shall be (I do not know that I ought to use such an expression) worked into office without the people scrutinizing them, and when you once get them into office, let them stand and shake their fingers in the faces of the people of the State and say: "We are here, and we can hold on until you can get another Constitution; we care not." My friend from New York [Mr. Evarts] seems to raise an old political cry, and that is the reason why I said to my friend, that I had never been to Castle Garden. About fifteen or eighteen years ago, when a man was opposed to the institution of slavery, it was an evidence to certain minds that he was opposed to all existing institutions; that a man who did not believe in the divine relation of master and servant did not believe in the relation of husband and wife; and the man who did not bow down to and kiss the foot of a nigger driver was held to be an unfaithful husband. He was unfaithful to all the interests of society, and therefore he must be charged with "free love." What right had that gentleman to talk to me about family relations? What right had he to talk to me of "free love" and stigmatize me as unfriendly to the most sacred institutions of society, because, forsooth,

I thought it might be well to re-elect a good judge? It has nothing to do with the subject. He himself recalled the notions of the olden time; and if he desires to re-examine them I am prepared to open them up for discussion.

The question was put on the amendment of Mr. Chesebro, which, on a division, was declared lost by a vote of 36 to 48.

The question recurred on the amendment of Mr. Smith, as amended.

Mr. EVARTS—Under the ruling of the Chair I suppose it is now in order for me to make the motion I made yesterday, which was then supposed to be out of order.

The CHAIRMAN—The Chair holds to its ruling of yesterday; the amendment can only be admitted by the unanimous consent of the committee.

Mr. EVARTS—I ask unanimous consent now to dispose of this question, which I do not propose to debate; that is, to strike out the whole clause as it now stands. If strikes me the limitation of seventy years of age is out of place when we have a limitation of fourteen years' duration of office.

Mr. M. I. TOWNSEND—I object.

The CHAIRMAN—Objection being made, the amendment will not be considered in Committee of the Whole.

Mr. GRAVES—Is a substitute now in order?

The CHAIRMAN—It is.

Mr. GRAVES—I offer the following substitute.

The SECRETARY read the substitute as follows:

"There shall be a court of appeals composed of eight judges, of whom four shall be elected by the electors of the State, for eight years; and four selected from the class of justices of the supreme court having the shortest time to serve. One of the four elected by the electors, shall be designated upon the ballot as chief justice. Provision shall be made by law for selecting such justices of the supreme court, from time to time, and for classifying those selected, that one shall be elected every second year. Five of said judges shall constitute a quorum. The said court shall continue its sessions, at each term thereof, until all the causes upon the calendar shall be heard and decided, or put over or disposed of by consent of parties. The causes pending in the present court of appeals, on the adoption of this Constitution, shall be vested in the court of appeals created thereby. There shall be a commission of five commissioners elected by the electors of the State, three of whom shall constitute a quorum. One of said five commissioners shall be designated upon the ballot as president of said commission. The causes pending in the present court of appeals shall be heard and determined by the said commissioners, unless the court of appeals hereby created shall be unoccupied, and can hear and determine a part of said causes. The said commission shall continue for four years, unless the causes submitted to it are sooner determined. If any of such causes remain at the end of four years unheard and undetermined, they shall be heard and determined by the court of appeals. There shall be a clerk of the court of appeals

who shall be *ex officio* clerk of the supreme court, and shall keep his office at the seat of government. He shall be chosen by the electors of the State, and shall hold his office for eight years, but may be removed by the Governor, with the consent of the Senate, for cause shown. The court of appeals shall appoint its reporter, and such attendants as shall be authorized by law. In case the office of any judge of the court of appeals, or any one of the commissioners of appeals, or the office of clerk of the court of appeals shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor, until it shall be supplied by the next general election, when it shall be filled by election for the residue of the unexpired term.

Mr. GRAVES—In offering this substitute I am not unaware of a diversity of opinion existing among the delegates to this Convention upon the question of reorganizing the court of appeals; and it appears very clear from arguments made upon this floor that there are hardly two delegates in this Convention who agree upon any system. Yet there seems to be a very strong desire manifested that something new should take place, that we should have a new court, a new organization, a new set of judges to discharge an old duty—a question upon which no two of us seem to agree. There seems to be an itching desire on the part of the delegates to this Convention to bring forth something new, to establish a new organization, and yet, in the attempt to do this, they have failed to present to the consideration of the Convention a solitary instance of a want of integrity or a want of capacity in the present incumbents in the court, or under the present system of its organization. Now, sir, we have heard much of the necessity of creating an independent court. If I have a desire of my heart, as I believe every member in this Convention has, it is to get a good court, an honest court, a capable court, such a court as will meet the expectations of the people of the State of New York. I do not believe there is a single man in this Convention who desires any other kind of a court. And yet we are told by gentlemen who have presented us with very able and ingenious arguments upon this question that we must have this court so organized and so independent that it will be entirely free from the control and influence of the people. I ask, in the name of common sense, who are the people? The innate principle of the people to-day is justice, everywhere justice. It is the controlling motive; and all over this country, everywhere, in every locality, even in the city of New York, there may be justice. There is no class of men in the world who so clearly present to the people their qualifications and virtues to be determined as the judges, both in the court of appeals and in the supreme court. There is no class of public officers whose acts are so public as the judges. The people are the spectators, and sharp to detect, and acute to determine the qualifications and virtues of the incumbents in office. The judges are attended by the great body of lawyers, capable and efficient to discriminate, men who have the charge of a high and responsible duty,

who have clients whose interests ought to be served; who are sworn to discharge that duty faithfully, and they go into the court watching with great interest, not only the appearance but the very acts of the judge, to see whether he is competent to discharge his duty, whether he is honest in its discharge, and whether he discharges it faithfully toward those who are litigants before him. But this is not all; we have an intelligent jury who are impaneled to hear decisions and judge upon all questions before the court. We have an intelligent array of witnesses. We have a large multitude of spectators, people who come to the court for the purpose of hearing cases tried, who have no interest in that court, except to know that the judge discharges his duty faithfully. But it is said by gentlemen who have been long in practice that the very fact of a re-election is evidence on the part of a justice to obtain a renomination by corruption and fraud—a miserable calumny in my judgment upon the integrity and intelligence of the age in which we live. For, if the judge upon the bench is corrupt or ignorant in the discharge of his duty, and plans for a re-election, and the people respond to his machinations and re-elect him, they are not free from the reproaches that honest men (of whom there are some in every community) heap upon him. I ask is there much force in the argument. The body of the people are corrupt, or a judge who fails to do his duty will never be sustained. Is it not true that if he discharges his duty faithfully and honestly and independently he has an advantage over every other candidate for the office? I will ask any gentleman within the hearing of my voice who has been a candidate for re-election, has not the fact that he discharged his duty faithfully and honestly been an army in his favor? Is it not the very bulwark a man wants behind him? Has it not been the very means that has secured his re-election over a stranger? Was it not a power his opponent desired but could not get? The incumbent in office has courted that power by an honest and faithful administration of the duties of his office. Sir, such an argument as I have heard here is a libel upon the intelligence of the people of the State, an argument which says that when the people have seen a judge and heard him from day to day, who have attended his court and seen his administration, they are not qualified to judge of his fitness for his position. It is a libel upon the character, the intelligence of the bar of the State of New York, to say that they will consent to the re-election of a dishonest and dishonorable judge. Now, it is said that there are some dishonest judges, but with all the scanning, with all the inquiry, with all the search that has been made since this question has been before the Convention no place has been fixed upon where corrupt judges hold office, except by hearsay in the city of New York. I listened yesterday to the labored and very ingenious and intelligent argument of my friend Judge Daly, from New York, who gave us a history of the English judicial system and followed it down to this country. He gave us, as I supposed, some evidence of the purity and integrity of the judges before 1846, and left us to infer by implication, to

take it for granted, that there had been more corruption since that time. When I asked him if he heard of any corruption since that time he answered directly that he had heard of it. But how? Through an anonymous article in a public print, the truth of which, of course, no man here would suppose could not be questioned. I am not one of those who are ready to suppose every body is guilty until he is proven innocent. I take the legal ground that every man is innocent until he is proven guilty. There is not a scintilla of evidence before this Convention that a single man elected under the provisions of the Constitution of 1846 has violated his oath or failed to discharge his duty properly. But suppose it be true. I ask if the very fact of the re-election of Judge Daly to the office he now holds is not a refutation of the position he takes? He has been re-elected because the people believe he is an honest man. The people have appreciated his integrity and honesty. And if such gentlemen as Mr. Daly and Mr. Evarts of New York will take an interest in the welfare of their city so far as the selection of its officers is concerned, New York would have no more corrupt judges than has the country. It is the fault of just such high-minded men as my friend Judge Daly and my friend Mr. Evarts, that improper men are elected. Now, conceding that the city of New York has bad men of office. What would be the consequence if those men held office for life, or with the tenure that seems to be desired here? I will ask those two learned gentlemen from New York if they desire bad men re-elected, and whether, if incumbents in office are bad or corrupt, the people of New York will re-elect them? No; the people are not so corrupt as to disregard or pervert their own interests in this manner. They are not so corrupt as to elect bad men. Men everywhere, as I said before, love justice, and honesty, and integrity. There is but one mode in this State; you cannot get honest men, capable, tried men, except by bringing them before the public and allowing the public to determine their qualifications. But the gentleman says we should elect for a long term. Elect whom? Would you take a stranger, A, B or C, a man who has never been on the bench, and elect him to the office of chief justice of the State of New York for a life-time? Why do we elect a man to the office of judge? Because he has been an able lawyer, an intelligent and able man in the community, and because we believe he will faithfully execute his duties. But at the end of four years or eight years we find he is not the man we supposed he was; he is incompetent, unworthy of the position; shall we continue him in office? At the end of eight years we have eight years' experience of his qualifications, and then we can judge whether he is worthy of a re-election; then we can tell whether or not we misjudged him when we elected him. It seems to me this is one of those questions where there can be no doubt as to the duty of the Convention. Let the people be their own masters and elect their own servants.

The question was then put on the amendment of Mr. Graves, and it was declared lost.

The question recurred on the amendment of Mr. Smith.

Mr. LANDON—I move to strike out these words, in the second line of the section: "There shall be a court of appellate jurisdiction called the court of appeals." I make this motion in order to lay before this committee a plan which, though it may not commend itself to the favorable attention of this committee, can fare no worse than the many plans preceding it.

The CHAIRMAN—The Chair must hold that the amendment is not in order, as not being germane to the amendment now pending.

Mr. LANDON—I move then to strike out the provision for the court of appeals in the section now pending.

Mr. COMSTOCK—I submit that would be virtually striking out the thing which has been adopted.

The CHAIRMAN—The Chair is of opinion that the point of order is well taken. If the gentleman has a substitute to offer for the amendment now pending it will be received.

Mr. LANDON—I have a plan which, with the permission of the committee, I will submit. My proposition is, first, to abolish the court of appeals. Second, adopt the system reported by the majority of the Committee on the Judiciary, except that the presiding justice of each department shall not hold circuit or special terms. Third, I propose this section: "The presiding justices of the several departments shall hold at least two extraordinary general terms in every year. No right of appeal to an extraordinary term shall exist; but the several general terms of the State, may direct such cases to be there heard as may seem necessary in order to promote harmony in the decisions throughout the State." I desire by this proposition to test the question whether there shall be more than one appellate tribunal in the State? In my opinion one trial and one appellate court for the same case is enough. I am sure no question has so much oppressed every lawyer in this Convention as this: "What shall be done with the court of appeals?" The Judiciary Committee have long and patiently struggled with the question; they have presented a plan which this committee seems willing to abandon. Individual delegates have presented plans, but they seem to have been presented, rather as contributions to the common fund of suggestions, than as remedies for any existing evils. This debate to which we have listened for about a week, has been filled with complaints of the imperfections of the old system, and with fears that the new system will work no better than the old. The real difficulty is, that any one court will be utterly unable to transact the business that will be brought before it, unless the right to bring appeals shall be limited. The court as now constituted is unable to transact the business; and yet there is no complaint of any want of ability or lack of industry on the part of the judges. With the ever increasing wealth, population and activity of our people, litigation must continually increase; any one court, in the future, will be less able than in the past to dispose of the business that will continually press upon its calendar. That calendar will forever lengthen; and unless we limit the right to bring appeals, the delays will lengthen with calendar. And air, it is safer to

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A delegate from the sixteenth senatorial district, 979, 1322, 1735, 1736, 1764, 1827, 1843, 2162, 2190, 2550, 3352, 3606, 3688.

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Appointed member of committee on counties, towns, etc., 96.

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A delegate from the sixteenth senatorial district, 46, 49, 60, 90, 116, 731, 991, 1091, 1147, 1981, 2008, 2018, 2034, 2090, 2091, 2099, 2164, 2405, 2411, 2453, 2638, 2646, 2690, 2692, 2758, 3005, 3474, 3550, 3559, 3639, 3749, 3766, 3910.

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- A delegate from the twenty-fourth senatorial district, 299, 604, 1790, 2132, 2243, 2604, 2669, 3004, 3238, 3426, 3474, 3925, 3926.
- Appointed member of committee on adulteration and sale of intoxicating liquors, 142.
- Appointed member of committee on cities, etc., 95.
- Appointed member of committee on practice of medicine, 2972.
- Appointed member of committee on Secretary of State, etc., 95.
- Oath of office taken by, 19.
- Petition in reference to practice of medicine, presented by, 2654, 2684, 2925, 2971.
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- Remarks of, on amendments to report of committee on suffrage, 520.
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- Remarks of, on report of committee on cities, 3014, 3015, 3016.
- Remarks of, on report of committees on finances and canals, 1790, 1942, 1943, 2300, 2319.
- Remarks of, on report of committee on judiciary, 2440, 2441, 2585, 2586, 2610.
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- A delegate at large, 644, 1343, 1375, 1469, 1657, 1821, 2053, 2607, 2672, 2677, 2679, 2683, 3500, 3573, 3655, 3701, 3709, 3728, 3737.
- Appointed member of committee on finances of State, etc., 95.
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- Oath of office taken by, 18.
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- Remarks of, on report of committee on powers and duties of Legislature, 1343, 1344.
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HARRIS, IRA,

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Appointed member of committee on cities, etc., 95.

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HATCH, ISRAEL T.,

A delegate from the thirty-first senatorial district, 31, 41, 62, 88, 169, 1044, 1731, 1735, 2338, 2658, 2691.

Appointed member of committee on finances of State, etc., 95.

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- Remarks of, on amendments to report of committee on suffrage, 506.
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- Remarks of, on report of joint committee on currency, banking, etc., and corporations other than municipal, 1044.
- Remarks of, on report of committee on organization of Legislature, etc., 677.
- Remarks of, on resolution calling for information in reference to canals, 31, 41, 167, 169.
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HISCOCK, FRANK,

- A delegate from the twenty-second senatorial district, elected to fill vacancy occasioned by the death of L. Harris Hiscock.
- Appointed member of committee to provide for care of disabled soldiers of State, 1531.
- Oath of office taken by, 232.
- Petition against abolishing office of regents of university, presented by, 1771.
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- Remarks of, on report of committees on finances and canals, 1743, 2349, 2353.
- Remarks of, on report of committee on powers and duties of Legislature, 1357.
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HISCOCK, L. HARRIS,

- A delegate from the twenty-second senatorial district.
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HITCHCOCK, ADOLPHUS F.,

- A delegate from the twelfth senatorial district, 2697.
- Appointed member of committee in reference to meeting of Convention in Troy, 2660.
- Appointed member of committee on corporations, other than municipal, etc., 96.
- Oath of office taken by, 18.
- Petition in reference to prohibition of sale of intoxicating liquors, presented by, 625.
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HITCHMAN, WILLIAM,

- A delegate from the eighth senatorial district, 170, 671, 929.
- Appointed member of committee on currency, banking, etc., 96.
- Appointed member of committee to provide for care of disabled soldiers of State, 1531.
- Oath of office taken by, 18.
- Petition in reference to prohibiting donations to sectarian institutions, presented by, 624.
- Remarks of, on report of committee on suffrage, 599.
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A delegate from the seventh senatorial district, 32, 137, 1271, 1295, 1317, 2551, 2634, 2790, 2903, 3523, 3568, 3579, 3713.

Appointed member of committee on future amendments of Constitution, 96.

Appointed member of committee on powers and duties of Legislature, etc., 95.

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A delegate from the fifth senatorial district.

Appointed member of committee on contingent expenses, 96.

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A delegate from the second senatorial district.

Appointed member of committee on salt spring, 96.

Appointed member of committee on town and county officers, etc., 95.

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A delegate from the twenty-first senatorial district.

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A delegate from the sixth senatorial district.

Appointed member of committee on State prisons, etc., 96.

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A delegate from the seventeenth senatorial district.

Appointed member of committee on corporations, other than municipal, etc., 96.

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A delegate from the third senatorial district, 584, 725.
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